

Calendar No. 94

106TH CONGRESS
1ST Session

S. 900

[Report No. 106-44]

A BILL

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes.

APRIL 28, 1999

Read twice and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

APRIL 28, 1999

Mr. GRAMM, from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill, which was read twice and placed on the calendar

A BILL

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Financial Services Modernization Act of 1999”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES

Subtitle A—Affiliations

- Sec. 101. Glass-Steagall Act repealed.
 Sec. 102. Financial activities.
 Sec. 103. Conforming amendments.
 Sec. 104. Operation of State law.

Subtitle B—Streamlining Supervision of Bank Holding Companies

- Sec. 111. Streamlining bank holding company supervision.
 Sec. 112. Authority of State insurance regulator and Securities and Exchange
 Commission.
 Sec. 113. Role of the Board of Governors of the Federal Reserve System.
 Sec. 114. Examination of investment companies.
 Sec. 115. Equivalent regulation and supervision.
 Sec. 116. Interagency consultation.
 Sec. 117. Preserving the integrity of FDIC resources.

Subtitle C—Activities of National Banks

- Sec. 121. Authority of national banks to underwrite municipal revenue bonds.
 Sec. 122. Subsidiaries of national banks.
 Sec. 123. Agency activities.
 Sec. 124. Prohibiting fraudulent representations.
 Sec. 125. Insurance underwriting by national banks.

Subtitle D—National Treatment of Foreign Financial Institutions

- Sec. 151. National treatment of foreign financial institutions.
 Sec. 152. Representative offices.

TITLE II—INSURANCE CUSTOMER PROTECTIONS

- Sec. 201. Functional regulation of insurance.
 Sec. 202. Insurance customer protections.
 Sec. 203. Federal and State dispute resolution.

TITLE III—REGULATORY IMPROVEMENTS

- Sec. 301. Elimination of SAIF and DIF special reserves.
 Sec. 302. Expanded small bank access to S corporation treatment.
 Sec. 303. Meaningful CRA examinations.
 Sec. 304. Temporary extension of Bank Insurance Fund member FICO assess-
 ment rates.
 Sec. 305. Cross marketing restriction; limited purpose bank relief; divestiture.
 Sec. 306. “Plain language” requirement for Federal banking agency rules.
 Sec. 307. Retention of “Federal” in name of converted Federal savings associa-
 tion.
 Sec. 308. Community Reinvestment Act exemption.

- Sec. 309. Bank officers and directors as officers and directors of public utilities.
- Sec. 310. Control of bankers banks.
- Sec. 311. Multistate licensing and interstate insurance sales activities.

TITLE IV—FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Savings association membership.
- Sec. 404. Advances to members; collateral.
- Sec. 405. Eligibility criteria.
- Sec. 406. Management of banks.
- Sec. 407. Resolution Funding Corporation.
- Sec. 408. GAO study on Federal Home Loan Bank System capital.

TITLE V—FUNCTIONAL REGULATION OF BROKERS AND DEALERS

- Sec. 501. Definition of broker.
- Sec. 502. Definition of dealer.
- Sec. 503. Definition and treatment of banking products.
- Sec. 504. Qualified investor defined.
- Sec. 505. Government securities defined.
- Sec. 506. Effective date.
- Sec. 507. Rule of construction.

TITLE VI—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 601. Prohibition on new unitary savings and loan holding companies.

1 **TITLE I—FACILITATING AFFILI-** 2 **ATION AMONG BANKS, SECUR-** 3 **RITIES FIRMS, AND INSUR-** 4 **ANCE COMPANIES**

5 **Subtitle A—Affiliations**

6 **SEC. 101. GLASS-STEAGALL ACT REPEALED.**

7 (a) SECTION 20 REPEALED.—Section 20 of the
8 Banking Act of 1933 (12 U.S.C. 377) (commonly referred
9 to as the “Glass-Steagall Act”) is repealed.

10 (b) SECTION 32 REPEALED.—Section 32 of the
11 Banking Act of 1933 (12 U.S.C. 78) is repealed.

1 **SEC. 102. FINANCIAL ACTIVITIES.**

2 (a) IN GENERAL.—Section 4 of the Bank Holding
3 Company Act of 1956 (12 U.S.C. 1843) is amended by
4 adding at the end the following new subsections:

5 “(k) ENGAGING IN ACTIVITIES THAT ARE FINAN-
6 CIAL IN NATURE.—

7 “(1) IN GENERAL.—Notwithstanding subsection
8 (a), a bank holding company may engage in any ac-
9 tivity, and may acquire and retain the shares of any
10 company engaged in any activity, that the Board, in
11 coordination with the Secretary of the Treasury, de-
12 termines (by regulation or order) to be financial in
13 nature or incidental to such financial activities.

14 “(2) COORDINATION BETWEEN THE BOARD
15 AND THE SECRETARY OF THE TREASURY.—

16 “(A) PROPOSALS RAISED BEFORE THE
17 BOARD.—

18 “(i) CONSULTATION.—The Board
19 shall notify the Secretary of the Treasury
20 of, and consult with the Secretary of the
21 Treasury concerning, any request, pro-
22 posal, or application under this subsection
23 for a determination of whether an activity
24 is financial in nature or incidental to such
25 a financial activity.

“(ii) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in clause (i) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity.

“(B) PROPOSALS RAISED BY THE TREASURY.—

“(i) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

“(ii) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under clause (i) (or such longer period as

1 the Secretary of the Treasury and the
 2 Board determine to be appropriate in light
 3 of the circumstances), the Board shall de-
 4 termine whether to initiate a public rule-
 5 making proposing that the subject rec-
 6 ommended activity be found to be financial
 7 in nature or incidental to a financial activ-
 8 ity under this subsection, and shall notify
 9 the Secretary of the Treasury in writing of
 10 the determination of the Board and, in the
 11 event that the Board determines not to
 12 seek public comment on the proposal, the
 13 reasons for that determination.

14 “(3) FACTORS TO BE CONSIDERED.—The
 15 Board shall determine that an activity is financial in
 16 nature or incidental to financial activities, if the
 17 Board finds that such activity is consistent with—

18 “(A) the purposes of this Act and the Fi-
 19 nancial Services Modernization Act of 1999;

20 “(B) changes or reasonably expected
 21 changes in the marketplace in which bank hold-
 22 ing companies compete;

23 “(C) changes or reasonably expected
 24 changes in the technology for delivering finan-
 25 cial services; and

1 “(D) fostering—

2 “(i) effective competition with any
3 company seeking to provide financial serv-
4 ices in the United States;

5 “(ii) the efficient delivery of informa-
6 tion and services that are financial in na-
7 ture through the use of technological
8 means, including any application necessary
9 to protect the security or efficacy of sys-
10 tems for the transmission of data or finan-
11 cial transactions; and

12 “(iii) the provision to customers of
13 any available or emerging technological
14 means for using financial services.

15 “(4) ACTIVITIES THAT ARE FINANCIAL IN NA-
16 TURE.—For purposes of this subsection, the fol-
17 lowing activities shall be considered to be financial
18 in nature:

19 “(A) Lending, exchanging, transferring, in-
20 vesting for others, or safeguarding money or se-
21 curities.

22 “(B) Insuring, guaranteeing, or indem-
23 nifying against loss, harm, damage, illness, dis-
24 ability, or death, or providing and issuing annu-
25 ities, and acting as principal, agent, or broker

1 for purposes of the foregoing, in any State, in
2 full compliance with the laws and regulations of
3 that State that apply to each type of insurance
4 license or authorization in that State.

5 “(C) Providing financial, investment, or
6 economic advisory services, including advising
7 an investment company (as defined in section 3
8 of the Investment Company Act of 1940).

9 “(D) Issuing or selling instruments rep-
10 resenting interests in pools of assets permissible
11 for a bank to hold directly.

12 “(E) Underwriting, dealing in, or making
13 a market in securities.

14 “(F) Engaging in any activity that the
15 Board has determined, by order or regulation
16 that is in effect on the date of enactment of the
17 Financial Services Modernization Act of 1999,
18 to be so closely related to banking or managing
19 or controlling banks as to be a proper incident
20 thereto (subject to the same terms and condi-
21 tions contained in such order or regulation, un-
22 less modified by the Board).

23 “(G) Engaging, in the United States, in
24 any activity that—

1 “(i) a bank holding company may en-
2 gage in outside of the United States; and

3 “(ii) the Board has determined, under
4 regulations issued pursuant to subsection
5 (c)(13) (as in effect on the day before the
6 date of enactment of the Financial Services
7 Modernization Act of 1999) to be usual in
8 connection with the transaction of banking
9 or other financial operations abroad.

10 “(H) Directly or indirectly acquiring or
11 controlling, whether as principal, on behalf of 1
12 or more entities (including entities, other than
13 a depository institution or subsidiary of a de-
14 pository institution that the bank holding com-
15 pany controls), or otherwise, shares, assets, or
16 ownership interests (including debt or equity se-
17 curities, partnership interests, trust certificates,
18 or other instruments representing ownership) of
19 a company or other entity, whether or not con-
20 stituting control of such company or entity, en-
21 gaged in any activity not authorized pursuant
22 to this section if—

23 “(i) the shares, assets, or ownership
24 interests are not acquired or held by a de-

1 pository institution or subsidiary of a de-
2 pository institution; and

3 “(ii) such shares, assets, or ownership
4 interests are acquired and held by a securi-
5 ties affiliate or an affiliate thereof as part
6 of a bona fide underwriting or merchant
7 banking activity, including investment ac-
8 tivities engaged in for the purpose of ap-
9 preciation and ultimate resale or disposi-
10 tion of the investment.

11 “(I) Directly or indirectly acquiring or con-
12 trolling, whether as principal, on behalf of 1 or
13 more entities (including entities, other than a
14 depository institution or subsidiary of a deposi-
15 tory institution, that the bank holding company
16 controls), or otherwise, shares, assets, or owner-
17 ship interests (including debt or equity securi-
18 ties, partnership interests, trust certificates or
19 other instruments representing ownership) of a
20 company or other entity, whether or not consti-
21 tuting control of such company or entity, en-
22 gaged in any activity not authorized pursuant
23 to this section if—

24 “(i) the shares, assets, or ownership
25 interests are not acquired or held by a de-

1 pository institution or a subsidiary of a de-
2 pository institution;

3 “(ii) such shares, assets, or ownership
4 interests are acquired and held by an in-
5 surance company that is predominantly en-
6 gaged in underwriting life, accident and
7 health, or property and casualty insurance
8 (other than credit-related insurance) or
9 providing and issuing annuities; and

10 “(iii) such shares, assets, or owner-
11 ship interests represent an investment
12 made in the ordinary course of business of
13 such insurance company in accordance
14 with relevant State law governing such in-
15 vestments.

16 “(J) Activities that the Board determines
17 (by regulation or order) are complementary to
18 financial activities, or any other service that the
19 Board determines (by regulation or order) not
20 to pose a substantial risk to the safety or
21 soundness of depository institutions or the fi-
22 nancial system generally.

23 “(5) ACTIONS REQUIRED.—

24 “(A) IN GENERAL.—The Board shall, by
25 regulation or order, define, consistent with the

1 purposes of this Act, the activities described in
2 subparagraph (B) as financial in nature, and
3 the extent to which such activities are financial
4 in nature or incidental to activities that are fi-
5 nancial in nature.

6 “(B) ACTIVITIES.—The activities described
7 in this subparagraph are—

8 “(i) lending, exchanging, transferring,
9 investing for others, or safeguarding finan-
10 cial assets other than money or securities;

11 “(ii) providing any device or other in-
12 strumentality for transferring money or
13 other financial assets;

14 “(iii) arranging, effecting, or facili-
15 tating financial transactions for the ac-
16 count of third parties; and

17 “(iv) activities that are complemen-
18 tary to financial activities, or any other
19 service that the Board determines (by reg-
20 ulation or order) not to pose a substantial
21 risk to the safety or soundness of deposi-
22 tory institutions or the financial system
23 generally.

24 “(6) REQUIRED NOTIFICATION.—

1 “(A) IN GENERAL.—A bank holding com-
 2 pany that acquires any company or commences
 3 any activity pursuant to this subsection shall
 4 provide written notice to the Board describing
 5 the activity commenced or conducted by the
 6 company acquired not later than 30 calendar
 7 days after commencing the activity or consum-
 8 mating the acquisition, as applicable.

9 “(B) APPROVAL NOT REQUIRED FOR CER-
 10 TAIN FINANCIAL ACTIVITIES.—Except as pro-
 11 vided in subsection (j) with regard to the acqui-
 12 sition of a savings association, a bank holding
 13 company may commence any activity, or ac-
 14 quire any company, pursuant to paragraph (4)
 15 or any regulation prescribed or order issued
 16 under paragraph (5), without prior approval of
 17 the Board.

18 “(l) CONDITIONS FOR ENGAGING IN EXPANDED FI-
 19 NANCIAL ACTIVITIES.—

20 “(1) IN GENERAL.—Notwithstanding subsection
 21 (k), a bank holding company may not engage in any
 22 activity, or directly or indirectly acquire or retain
 23 shares of any company engaged in any activity,
 24 under subsection (k), other than activities permis-

1 sible for a bank holding company under subsection
2 (c)(8), unless—

3 “(A) all of the insured depository institu-
4 tion subsidiaries of the bank holding company
5 are well capitalized;

6 “(B) all of the insured depository institu-
7 tion subsidiaries of the bank holding company
8 are well managed; and

9 “(C) the bank holding company has filed
10 with the Board—

11 “(i) a declaration that the company
12 elects to engage in activities or acquire and
13 retain shares of a company which were not
14 permissible for a bank holding company to
15 engage in or acquire before the enactment
16 of the Financial Services Modernization
17 Act of 1999; and

18 “(ii) a certification that the company
19 meets the requirements of subparagraphs
20 (A) and (B).

21 “(2) FOREIGN BANKS.—For purposes of para-
22 graph (1), the Board shall apply comparable capital
23 and management standards to a foreign bank that
24 operates a branch or agency or owns or controls a
25 commercial lending company in the United States,

1 giving due regard to the principle of national treat-
2 ment and equality of competitive opportunity.

3 “(3) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) the term ‘well capitalized’ has the
6 same meaning as in section 38 of the Federal
7 Deposit Insurance Act;

8 “(B) the term ‘well managed’ means—

9 “(i) in the case of a depository insti-
10 tution that has been examined, unless oth-
11 erwise determined in writing by the appro-
12 priate Federal banking agency—

13 “(I) the achievement of a com-
14 posite rating of 1 or 2 under the Uni-
15 form Financial Institutions Rating
16 System (or an equivalent rating under
17 an equivalent rating system) in con-
18 nection with the most recent examina-
19 tion or subsequent review of the de-
20 pository institution; and

21 “(II) at least a rating of 2 for
22 management, if that rating is given;

23 “(ii) in the case of any depository in-
24 stitution that has not been examined, the
25 existence and use of managerial resources

1 that the appropriate Federal banking agen-
2 cy determines are satisfactory; and

3 “(iii) the terms ‘appropriate Federal
4 banking agency’ and ‘depository institu-
5 tion’ have the same meanings as in section
6 3 of the Federal Deposit Insurance Act.

7 “(m) PROVISIONS APPLICABLE TO BANK HOLDING
8 COMPANIES THAT FAIL TO MEET CERTAIN REQUIRE-
9 MENTS.—

10 “(1) IN GENERAL.—If the Board finds that—

11 “(A) a bank holding company is engaged,
12 directly or indirectly, in any activity under sub-
13 section (k), other than activities that are per-
14 missible for a bank holding company under sub-
15 section (c)(8); and

16 “(B) such bank holding company is not in
17 compliance with the requirements of subsection
18 (l),

19 the Board shall give notice to the bank holding com-
20 pany to that effect, describing the conditions giving
21 rise to the notice.

22 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
23 QUIRED.—Not later than 45 days after the date of
24 receipt by a bank holding company of a notice given
25 under paragraph (1) (or such additional period as

1 the Board may permit), the bank holding company
2 shall execute an agreement with the Board to com-
3 ply with the requirements applicable to a bank hold-
4 ing company under subsection (1).

5 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
6 the conditions described in a notice to a bank hold-
7 ing company under paragraph (1) are corrected, the
8 Board may impose such limitations on the conduct
9 or activities of that bank holding company or any af-
10 filiate of that company as the Board determines to
11 be appropriate under the circumstances and con-
12 sistent with the purposes of this Act.

13 “(4) FAILURE TO CORRECT.—If the conditions
14 described in a notice to a bank holding company
15 under paragraph (1) are not corrected within 180
16 days after the date of receipt by the bank holding
17 company of a notice under paragraph (1), the Board
18 may require such bank holding company, under such
19 terms and conditions as may be imposed by the
20 Board and subject to such extension of time as may
21 be granted in the discretion of the Board, either—

22 “(A) to divest control of any subsidiary in-
23 sured depository institutions; or

24 “(B) to cease to engage in any activity
25 conducted by such bank holding company or its

1 subsidiaries (other than a depository institution
 2 or a subsidiary of a depository institution) that
 3 is not an activity that is permissible for a bank
 4 holding company under subsection (c)(8).

5 “(n) AUTHORITY TO RETAIN COMMODITY ACTIVI-
 6 TIES AND AFFILIATIONS.—Notwithstanding subsection
 7 (a), a company that is not a bank holding company or
 8 a foreign bank (as defined in section 1(b)(7) of the Inter-
 9 national Banking Act of 1978) and becomes a bank hold-
 10 ing company after the date of enactment of the Financial
 11 Services Modernization Act of 1999, may continue to en-
 12 gage in, or directly or indirectly own or control shares of
 13 a company engaged in, activities related to the trading,
 14 sale, or investment in commodities and underlying phys-
 15 ical properties that were not permissible for bank holding
 16 companies to conduct in the United States as of Sep-
 17 tember 30, 1997, if—

18 “(1) the bank holding company, or any sub-
 19 sidiary of the bank holding company, lawfully was
 20 engaged, directly or indirectly, in any of such activi-
 21 ties as of September 30, 1997, in the United States;
 22 and

23 “(2) the bank holding company is predomi-
 24 nantly engaged in activities that are financial in na-

1 ture or incidental thereto, as determined under para-
2 graph (4) of subsection (k).”.

3 (b) FINANCIAL ACTIVITIES OF BANK HOLDING COM-
4 PANIES INELIGIBLE FOR SUBSECTION (k) POWERS.—

5 (1) IN GENERAL.—Section 4(c)(8) of the Bank
6 Holding Company Act of 1956 (12 U.S.C.
7 1843(c)(8)) is amended to read as follows:

8 “(8) shares of any company, the activities of
9 which had been determined by the Board by regula-
10 tion or order under this paragraph as of the day be-
11 fore the date of enactment of the Financial Services
12 Modernization Act of 1999, to be so closely related
13 to banking as to be a proper incident thereto (sub-
14 ject to such terms and conditions contained in such
15 regulation, unless modified by the Board);”.

16 (2) CONFORMING CHANGES TO OTHER STAT-
17 UTES.—

18 (A) AMENDMENT TO THE BANK HOLDING
19 COMPANY ACT AMENDMENTS OF 1970.—Section
20 105 of the Bank Holding Company Act Amend-
21 ments of 1970 (12 U.S.C. 1850) is amended by
22 striking “, to engage directly or indirectly in a
23 nonbanking activity pursuant to section 4 of
24 such Act,”.

1 (B) AMENDMENT TO THE BANK SERVICE
 2 COMPANY ACT.—Section 4(f) of the Bank Serv-
 3 ice Company Act (12 U.S.C. 1864(f)) is amend-
 4 ed by striking the period at the end and insert-
 5 ing the following: “as of the day before the date
 6 of enactment of the Financial Services Mod-
 7 ernization Act of 1999.”.

8 **SEC. 103. CONFORMING AMENDMENTS.**

9 Section 10(c)(2)(F)(i) of the Home Owners’ Loan
 10 Act (12 U.S.C. 1467a(c)(2)(F)(i)) is amended—

11 (1) by inserting “is permitted for bank holding
 12 companies under subsection (c) or (k) of section 4
 13 of the Bank Holding Company Act of 1956, or
 14 which” after “(i) which”; and

15 (2) by striking “section 4(c)” and inserting
 16 “subsection (c) or (k) of section 4”.

17 **SEC. 104. OPERATION OF STATE LAW.**

18 (a) STATE REGULATION OF THE BUSINESS OF IN-
 19 SURANCE.—The Act entitled “An Act to express the intent
 20 of Congress with reference to the regulation of the busi-
 21 ness of insurance” and approved March 9, 1945 (15
 22 U.S.C. 1011 et seq.), commonly referred to as the
 23 “McCarran-Ferguson Act” remains the law of the United
 24 States.

1 (b) MANDATORY INSURANCE LICENSING REQUIRE-
2 MENTS.—No person or entity shall provide insurance in
3 a State as principal or agent unless such person or entity
4 is licensed, as required by the appropriate insurance regu-
5 lator of such State in accordance with the relevant State
6 insurance laws, subject to subsections (c), (d), and (e).

7 (c) AFFILIATIONS.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), no State may, by statute, regulation,
10 order, interpretation, or other action, prevent or re-
11 strict the affiliations authorized or permitted by this
12 Act and the amendments made by this Act.

13 (2) INSURANCE.—With respect to affiliations
14 between insured depository institutions, or any sub-
15 sidiary or affiliate thereof, and persons or entities
16 engaged in the business of insurance, paragraph (1)
17 does not prohibit any State from collecting, review-
18 ing, and taking actions on required applications and
19 other documents or reports as may be necessary con-
20 cerning proposed acquisitions, changes, or continu-
21 ations of control of any entity engaged in the busi-
22 ness of insurance and domiciled in that State, if the
23 State actions do not have the practical effect of dis-
24 criminating, either intentionally or unintentionally,
25 against an insured depository institution or a sub-

1 subsidiary or affiliate thereof, or against any person or
2 entity based upon affiliation with an insured deposi-
3 tory institution.

4 (d) ACTIVITIES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (3), and except with respect to insurance
7 sales, solicitation, and cross marketing activities,
8 which shall be governed by paragraph (2), no State
9 may, by statute, regulation, order, interpretation or
10 other action, prevent or restrict an insured deposi-
11 tory institution or subsidiary or affiliate thereof
12 from engaging directly or indirectly, either by itself
13 or in conjunction with a subsidiary, affiliate, or any
14 other entity or person, in any activity authorized or
15 permitted under this Act and the amendments made
16 by this Act.

17 (2) INSURANCE SALES.—

18 (A) IN GENERAL.—In accordance with the
19 legal standards for preemption set forth in the
20 decision of the Supreme Court of the United
21 States in *Barnett Bank of Marion County N.A.*
22 *v. Nelson*, 116 S. Ct. 1103 (1996), no State
23 may, by statute, regulation, order, interpreta-
24 tion, or other action, prevent or significantly
25 interfere with the ability of an insured deposi-

1 tory institution, or a subsidiary or affiliate
2 thereof, to engage, directly or indirectly, either
3 by itself or in conjunction with a subsidiary, af-
4 filiate, or any other party, in any insurance
5 sales, solicitation, or cross-marketing activity.

6 (B) CERTAIN STATE LAWS PRESERVED.—
7 Notwithstanding subparagraph (A), a State
8 may impose any of the following restrictions, or
9 restrictions that are substantially the same as
10 but no more burdensome or restrictive than
11 those in each of the following clauses:

12 (i) Restrictions prohibiting the rejec-
13 tion of an insurance policy solely because
14 the policy has been issued or underwritten
15 by any person not associated with such in-
16 sured depository institution, or any sub-
17 sidiary or affiliate thereof, when such in-
18 surance is required in connection with a
19 loan or extension of credit.

20 (ii) Restrictions prohibiting a require-
21 ment for any debtor, insurer, or insurance
22 agent or broker to pay a separate charge
23 in connection with the handling of insur-
24 ance that is required in connection with a
25 loan or other extension of credit or the

1 provision of another traditional banking
 2 product, unless such charge would be re-
 3 quired when the insured depository institu-
 4 tion, or any subsidiary or affiliate thereof,
 5 is the licensed insurance agent or broker
 6 providing the insurance.

7 (iii) Restrictions prohibiting the use of
 8 any advertisement or other insurance pro-
 9 motional material by an insured depository
 10 institution, or any subsidiary or affiliate
 11 thereof, that would cause a reasonable per-
 12 son to believe mistakenly that—

13 (I) a State or the Federal Gov-
 14 ernment is responsible for the insur-
 15 ance sales activities of, or stands be-
 16 hind the credit of, the institution, af-
 17 filiate, or subsidiary; or

18 (II) a State, or the Federal Gov-
 19 ernment guarantees any returns on
 20 insurance products, or is a source of
 21 payment on any insurance obligation
 22 of or sold by the institution, affiliate,
 23 or subsidiary.

24 (iv) Restrictions prohibiting the pay-
 25 ment or receipt of any commission or bro-

1 kerage fee or other valuable consideration
2 for services as an insurance agent or
3 broker to or by any person, unless such
4 person holds a valid State license regard-
5 ing the applicable class of insurance at the
6 time at which the services are performed,
7 except that, in this clause, the term “serv-
8 ices as an insurance agent or broker” does
9 not include a referral by an unlicensed per-
10 son of a customer or potential customer to
11 a licensed insurance agent or broker that
12 does not include a discussion of specific in-
13 surance policy terms and conditions.

14 (v) Restrictions prohibiting any com-
15 pensation paid to or received by any indi-
16 vidual who is not licensed to sell insurance
17 for the referral of a customer that seeks to
18 purchase, or seeks an opinion or advice on,
19 any insurance product to a person that
20 sells or provides opinions or advice on such
21 product, based on the purchase of insur-
22 ance by the customer.

23 (vi) Restrictions prohibiting the re-
24 lease of the insurance information of a cus-
25 tomer (defined as information concerning

1 the premiums, terms, and conditions of in-
2 surance coverage, including expiration
3 dates and rates, and insurance claims of a
4 customer contained in the records of the
5 insured depository institution, or a sub-
6 sidiary or affiliate thereof) to any person
7 or entity other than an officer, director,
8 employee, agent, subsidiary, or affiliate of
9 an insured depository institution, for the
10 purpose of soliciting or selling insurance,
11 without the express consent of the cus-
12 tomer, other than a provision that
13 prohibits—

14 (I) a transfer of insurance infor-
15 mation to an unaffiliated insurance
16 company, agent, or broker in connec-
17 tion with transferring insurance in
18 force on existing insureds of the in-
19 sured depository institution, or sub-
20 sidiary or affiliate thereof, or in con-
21 nection with a merger with or acquisi-
22 tion of an unaffiliated insurance com-
23 pany, agent, or broker; or

1 (II) the release of information as
2 otherwise authorized by Federal or
3 State law.

4 (vii) Restrictions prohibiting the use
5 of health information obtained from the in-
6 surance records of a customer for any pur-
7 pose, other than for its activities as a li-
8 censed agent or broker, without the ex-
9 press consent of the customer.

10 (viii) Restrictions prohibiting the ex-
11 tension of credit (or any product or service
12 that is equivalent to an extension of cred-
13 it), lease or sale of property of any kind,
14 or furnishing of any services or fixing or
15 varying the consideration for any of the
16 foregoing, on the condition or requirement
17 that the customer obtain insurance from
18 the insured depository institution, a sub-
19 subsidiary or affiliate thereof, or a particular
20 insurer, agent, or broker, other than a pro-
21 hibition that would prevent any insured de-
22 pository institution, or any subsidiary or
23 affiliate thereof—

24 (I) from engaging in any activity
25 that would not violate section 106 of

1 the Bank Holding Company Act
2 Amendments of 1970, as interpreted
3 by the Board of Governors of the Fed-
4 eral Reserve System; or

5 (II) from informing a customer
6 or prospective customer that insur-
7 ance is required in order to obtain a
8 loan or credit, that loan or credit ap-
9 proval is contingent upon the procure-
10 ment by the customer of acceptable
11 insurance, or that insurance is avail-
12 able from the insured depository insti-
13 tution, or any subsidiary or affiliate
14 thereof.

15 (ix) Restrictions requiring, when an
16 application by a customer for a loan or
17 other extension of credit from an insured
18 depository institution is pending, and in-
19 surance is offered or sold to the customer
20 or is required in connection with the loan
21 or extension of credit by the insured depos-
22 itory institution or any subsidiary or affil-
23 iate thereof, that a written disclosure be
24 provided to the customer or prospective
25 customer indicating that his or her choice

1 of an insurance provider will not affect the
2 credit decision or credit terms in any way,
3 except that the insured depository institu-
4 tion may impose reasonable requirements
5 concerning the creditworthiness of the in-
6 surance provider and scope of coverage
7 chosen.

8 (x) Restrictions, requiring clear and
9 conspicuous disclosure, in writing where
10 practicable, to the customer prior to the
11 sale of any insurance policy that such
12 policy—

13 (I) is not a deposit;

14 (II) is not insured by the Federal
15 Deposit Insurance Corporation;

16 (III) is not guaranteed by the in-
17 surance depository institution or, if ap-
18 propriate, its subsidiaries or affiliates
19 or any person soliciting the purchase
20 of or selling insurance on the premises
21 thereof; and

22 (IV) where appropriate, involves
23 investment risk, including potential
24 loss of principal.

1 (xi) Restrictions requiring that, when
2 a customer obtains insurance (other than
3 credit insurance or flood insurance) and
4 credit from an insured depository institu-
5 tion or its subsidiaries or affiliates, or any
6 person soliciting the purchase of or selling
7 insurance on the premises thereof, the
8 credit and insurance transactions be com-
9 pleted through separate documents.

10 (xii) Restrictions prohibiting, when a
11 customer obtains insurance (other than
12 credit insurance or flood insurance) and
13 credit from an insured depository institu-
14 tion or its subsidiaries or affiliates, or any
15 person soliciting the purchase of or selling
16 insurance on the premises thereof, inclu-
17 sion of the expense of insurance premiums
18 in the primary credit transaction without
19 the express written consent of the cus-
20 tomer.

21 (xiii) Restrictions requiring—

22 (I) maintenance of separate and
23 distinct books and records relating to
24 insurance transactions, including all

1 files relating to and reflecting cus-
2 tomer complaints; and

3 (II) that such insurance books
4 and records be made available to the
5 appropriate State insurance regulator
6 for inspection upon reasonable notice.

7 (C) LIMITATIONS.—

8 (i) OCC DEFERENCE.—Section 203(e)
9 does not apply with respect to any State
10 statute, regulation, order, interpretation,
11 or other action regarding insurance sales,
12 solicitation, or cross marketing activities
13 described in subparagraph (A) that was
14 issued, adopted, or enacted before Sep-
15 tember 3, 1998, and that is not described
16 in subparagraph (B).

17 (ii) NONDISCRIMINATION.—Subsection
18 (e) does not apply with respect to any
19 State statute, regulation, order, interpreta-
20 tion, or other action regarding insurance
21 sales, solicitation, or cross marketing ac-
22 tivities described in subparagraph (A) that
23 was issued, adopted, or enacted before
24 September 3, 1998, and that is not de-
25 scribed in subparagraph (B).

1 (iii) CONSTRUCTION.—Nothing in this
2 paragraph shall be construed—

3 (I) to limit the applicability of
4 the decision of the Supreme Court in
5 Barnett Bank of Marion County N.A.
6 v. Nelson, 116 S. Ct. 1103 (1996)
7 with respect to any State statute, reg-
8 ulation, order, interpretation, or other
9 action that is not referred to or de-
10 scribed in this paragraph; or

11 (II) to create any inference with
12 respect to any State statute, regula-
13 tion, order, interpretation, or other
14 action that is not referred to in this
15 paragraph.

16 (3) INSURANCE ACTIVITIES OTHER THAN
17 SALES.—State statutes, regulations, interpretations,
18 orders, and other actions shall not be preempted
19 under paragraph (1) to the extent that they—

20 (A) relate to, or are issued, adopted, or en-
21 acted for the purpose of regulating the business
22 of insurance in accordance with the Act of
23 March 9, 1945 (commonly known as the
24 “McCarran-Ferguson Act”);

1 (B) apply only to persons or entities that
2 are not insured depository institutions, but that
3 are directly engaged in the business of insur-
4 ance (except that they may apply to depository
5 institutions engaged in providing savings bank
6 life insurance as principal to the extent of regu-
7 lating such insurance);

8 (C) do not relate to or directly or indirectly
9 regulate insurance sales, solicitations, or cross
10 marketing activities; and

11 (D) are not prohibited under subsection
12 (e).

13 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
14 ANCE.—No State statute, regulation, interpretation,
15 order, or other action shall be preempted under
16 paragraph (1) to the extent that—

17 (A) it does not relate to, and is not issued
18 and adopted, or enacted for the purpose of reg-
19 ulating, directly or indirectly, insurance sales,
20 solicitations, or cross marketing activities cov-
21 ered under paragraph (2);

22 (B) it does not relate to, and is not issued
23 and adopted, or enacted for the purpose of reg-
24 ulating, directly or indirectly, the business of in-
25 surance activities other than sales, solicitations,

1 or cross marketing activities, covered under
2 paragraph (3);

3 (C) it does not relate to securities inves-
4 tigations or enforcement actions referred to in
5 subsection (f); and

6 (D) it is not prohibited under subsection
7 (e).

8 (e) NONDISCRIMINATION.—Except as provided in any
9 restriction described in subsection (d)(2)(B), no State
10 may, by statute, regulation, order, interpretation, or other
11 action, regulate the activities authorized or permitted
12 under this Act and the amendments made by this Act,
13 or any other provision of Federal law, of an insured depos-
14 itory institution, or subsidiary or affiliate thereof, to the
15 extent that such statute, regulation, order, interpretation,
16 or other action—

17 (1) distinguishes by its terms between insured
18 depository institutions, or subsidiaries or affiliates
19 thereof, and other persons or entities engaged in
20 such activities, in a manner that is in any way ad-
21 verse to any such insured depository institution, or
22 subsidiary or affiliate thereof;

23 (2) as interpreted or applied, has or will have
24 an impact on insured depository institutions, or sub-
25 sidiaries or affiliates thereof, that is substantially

1 more adverse than its impact on other persons or
2 entities providing the same products or services or
3 engaged in the same activities that are not insured
4 depository institutions, or subsidiaries or affiliates
5 thereof, or persons or entities affiliated therewith;

6 (3) effectively prevents an insured depository
7 institution, or subsidiary or affiliate thereof, from
8 engaging in activities authorized or permitted by this
9 Act and the amendments made by this Act, or any
10 other provision of Federal law; or

11 (4) conflicts with the intent of this Act and the
12 amendments made by this Act generally to permit
13 affiliations that are authorized or permitted by Fed-
14 eral law.

15 (f) LIMITATION.—Subsections (c) and (d) shall not
16 be construed to affect—

17 (1) the jurisdiction of the securities commission
18 (or any agency or office performing like functions)
19 of any State, under the laws of that State, to inves-
20 tigate and bring enforcement actions, consistent with
21 section 18(c) of the Securities Act of 1933, with re-
22 spect to fraud or deceit or unlawful conduct by any
23 person, in connection with securities or securities
24 transactions; or

1 (2) State laws, regulations, orders, interpreta-
 2 tions, or other actions of general applicability relat-
 3 ing to the governance of corporations, partnerships,
 4 limited liability companies, or other business associa-
 5 tions incorporated or formed under the laws of that
 6 State or domiciled in that State, or the applicability
 7 of the antitrust laws of any State or any State law
 8 that is similar to the antitrust laws if such laws, reg-
 9 ulations, interpretations, orders, or other actions are
 10 not inconsistent with the purposes of this Act to au-
 11 thorize or permit certain affiliations and to remove
 12 barriers to such affiliations.

13 (g) CERTAIN STATE AFFILIATION LAWS PREEMPTED
 14 FOR INSURANCE COMPANIES AND AFFILIATES.—Except
 15 as provided in subsection (c)(2), no State may, by law,
 16 regulation, order, interpretation, or otherwise—

17 (1) prevent or restrict the ability of any insurer,
 18 or any affiliate of an insurer (whether such affiliate
 19 is organized as a stock company, mutual holding
 20 company, or otherwise), to become a bank holding
 21 company, or to acquire control of an insured deposi-
 22 tory institution, where the practical effect of such
 23 State action would be to discriminate, intentionally
 24 or unintentionally, against an insurer, or any affil-

1 iate of an insurer, based upon its affiliation with an
 2 insured depository institution;

3 (2) limit the amount of the assets of an insurer
 4 that may be invested in the voting securities of an
 5 insured depository institution (or any company that
 6 controls such institution), except that the laws of the
 7 State of domicile of the insurer may limit the
 8 amount of such investment to an amount that is not
 9 less than 5 percent of the admitted assets of the in-
 10 surer; or

11 (3) prevent, restrict, or have the authority to
 12 review, approve, or disapprove a plan of reorganiza-
 13 tion by which an insurer proposes to reorganize from
 14 mutual form to become a stock insurer (whether as
 15 a direct or indirect subsidiary of a mutual holding
 16 company or otherwise), unless the State is the State
 17 of domicile of the insurer, except that the appro-
 18 priate regulatory authority of the State of domicile
 19 of the insurer shall consult with the appropriate reg-
 20 ulatory authority in other States in which the in-
 21 surer conducts business, regarding issues affecting
 22 the best interests of policyholders.

23 (h) MOTOR VEHICLE RENTAL AGENCY ACTIVI-
 24 TIES.—

25 (1) FINDINGS.—Congress finds that—

1 (A) in many States, the insurance laws are
 2 unclear as to whether personal insurance sales
 3 in connection with the short-term rental or leas-
 4 ing of motor vehicles should be licensed by the
 5 State as an insurance activity; and

6 (B) in those States that have not yet im-
 7 plemented regulations governing the offer or
 8 sale of insurance in connection with the short-
 9 term lease or rental of a motor vehicle, a pre-
 10 sumption should exist that no insurance license
 11 is required in connection with such sales.

12 (2) EXCEPTION FOR CERTAIN INSURANCE
 13 PRODUCTS.—Subsection (b) does not apply to any
 14 person or entity who offers or provides insurance an-
 15 cillary to a short-term lease or rental transaction of
 16 a motor vehicle in a State that does not, by statute,
 17 rule, or regulation, impose any licensing, appoint-
 18 ment, personal or corporate qualifications, or edu-
 19 cation requirements on such persons or entities.

20 (3) CONSTRUCTION.—Nothing in this sub-
 21 section shall be construed to alter the validity or ef-
 22 fect of any State law, or the prospective application
 23 of any final State statute, rule, or regulation which,
 24 by its specific terms, expressly regulates or exempts
 25 from regulation any person or entity who offers or

1 provides insurance ancillary to a short-term lease or
 2 rental transaction of a motor vehicle.

3 (4) LEASE PERIOD.—For purposes of this sub-
 4 section, a person shall be considered to be providing
 5 insurance ancillary to a short-term lease or rental
 6 transaction of a motor vehicle if the lease or rental
 7 transaction is for 60 days or less, and the insurance
 8 is provided for a period of consecutive days not ex-
 9 ceeding the length of the lease or rental.

10 (5) EFFECT.—This subsection shall remain in
 11 effect during the period beginning on the date of en-
 12 actment of this Act and ending 5 years after that
 13 date of enactment.

14 (i) DEFINITIONS.—For purposes of this section—

15 (1) the term “antitrust laws” has the same
 16 meaning as in subsection (a) of the first section of
 17 the Clayton Act, and includes section 5 of the Fed-
 18 eral Trade Commission Act (to the extent that such
 19 section 5 relates to unfair methods of competition);

20 (2) the term “insured depository institution”
 21 has the same meaning as in section 3 of the Federal
 22 Deposit Insurance Act; and

23 (3) the term “State” means any State of the
 24 United States, the District of Columbia, any terri-
 25 tory of the United States, Puerto Rico, Guam,

1 American Samoa, the Trust Territory of the Pacific
 2 Islands, the Virgin Islands, and the Northern Mar-
 3 iana Islands.

4 **Subtitle B—Streamlining Super-**
 5 **vision of Bank Holding Compa-**
 6 **nies**

7 **SEC. 111. STREAMLINING BANK HOLDING COMPANY SU-**
 8 **PERVISION.**

9 Section 5(c) of the Bank Holding Company Act of
 10 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

11 “(c) REPORTS AND EXAMINATIONS.—

12 “(1) REPORTS.—

13 “(A) IN GENERAL.—The Board, from time
 14 to time, may require a bank holding company
 15 and any subsidiary of such company to submit
 16 reports under oath to keep the Board informed
 17 as to—

18 “(i) the financial condition of the
 19 bank holding company or subsidiary, sys-
 20 tems for monitoring and controlling finan-
 21 cial and operating risks, and transactions
 22 with depository institution subsidiaries of
 23 the bank holding company; and

1 “(ii) compliance by the company or
2 subsidiary with applicable provisions of
3 this Act.

4 “(B) USE OF EXISTING REPORTS.—

5 “(i) IN GENERAL.—For purposes of
6 compliance with this paragraph, the Board
7 shall, to the fullest extent possible,
8 accept—

9 “(I) reports that a bank holding
10 company or any subsidiary of such
11 company has provided or been re-
12 quired to provide to other Federal or
13 State supervisors or to appropriate
14 self-regulatory organizations;

15 “(II) information that is other-
16 wise required to be reported publicly;
17 and

18 “(III) externally audited financial
19 statements.

20 “(ii) REPORTS FILED WITH OTHER
21 AGENCIES.—In the event that the Board
22 requires a report under this subsection
23 from a functionally regulated subsidiary of
24 a bank holding company of a kind that is
25 not required by another Federal or State

1 regulatory authority or an appropriate self-
 2 regulatory organization, the Board shall
 3 request that the appropriate regulatory au-
 4 thority or self-regulatory organization ob-
 5 tain such report. If the report is not made
 6 available to the Board, and the report is
 7 necessary to assess a material risk to the
 8 bank holding company or any of its deposi-
 9 tory institution subsidiaries or compliance
 10 with this Act, the Board may require such
 11 functionally regulated subsidiary to provide
 12 such a report to the Board.

13 “(2) EXAMINATIONS.—

14 “(A) EXAMINATION AUTHORITY FOR BANK
 15 HOLDING COMPANIES AND SUBSIDIARIES.—

16 Subject to subparagraph (B), the Board may
 17 make examinations of each bank holding com-
 18 pany and each subsidiary of such holding com-
 19 pany in order—

20 “(i) to inform the Board of the nature
 21 of the operations and financial condition of
 22 the holding company and such subsidiaries;

23 “(ii) to inform the Board of—

24 “(I) the financial and operational
 25 risks within the holding company sys-

tem that may pose a threat to the safety and soundness of any depository institution subsidiary of such holding company; and

“(II) the systems for monitoring and controlling such risks; and

“(iii) to monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution subsidiary and its affiliates.

“(B) FUNCTIONALLY REGULATED SUBSIDIARIES.—Notwithstanding subparagraph (A), the Board may make examinations of a functionally regulated subsidiary of a bank holding company only if—

“(i) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution; or

“(ii) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated

1 depository institution, and the Board can-
2 not make such determination through ex-
3 amination of the affiliated depository insti-
4 tution or the bank holding company.

5 “(C) RESTRICTED FOCUS OF EXAMINA-
6 TIONS.—The Board shall, to the fullest extent
7 possible, limit the focus and scope of any exam-
8 ination of a bank holding company to—

9 “(i) the bank holding company; and

10 “(ii) any subsidiary of the bank hold-
11 ing company that could have a materially
12 adverse effect on the safety and soundness
13 of any depository institution subsidiary of
14 the holding company due to—

15 “(I) the size, condition, or activi-
16 ties of the subsidiary; or

17 “(II) the nature or size of trans-
18 actions between the subsidiary and
19 any depository institution that is also
20 a subsidiary of the bank holding com-
21 pany.

22 “(D) DEFERENCE TO BANK EXAMINA-
23 TIONS.—The Board shall, to the fullest extent
24 possible, for the purposes of this paragraph, use
25 the reports of examinations of depository insti-

tutions made by the appropriate Federal and State depository institution supervisory authority.

“(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, forego an examination by the Board under this paragraph and instead review the reports of examination made of—

“(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

“(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

“(iii) any licensed insurance company by or on behalf of any State regulatory authority responsible for the supervision of insurance companies; and

“(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

“(3) CAPITAL.—

“(A) IN GENERAL.—The Board may not, by regulation, guideline, order, or otherwise,

1 prescribe or impose any capital or capital ade-
2 quacy rules, guidelines, standards, or require-
3 ments on any subsidiary of a bank holding com-
4 pany that—

5 “(i) is not an insured depository insti-
6 tution; and

7 “(ii) is—

8 “(I) in compliance with the appli-
9 cable capital requirements of another
10 Federal regulatory authority (includ-
11 ing the Securities and Exchange Com-
12 mission) or State insurance authority;
13 or

14 “(II) properly registered as an
15 investment adviser under the Invest-
16 ment Advisers Act of 1940, or with
17 any State.

18 “(B) RULE OF CONSTRUCTION.—Subpara-
19 graph (A) shall not be construed as preventing
20 the Board from imposing capital or capital ade-
21 quacy rules, guidelines, standards, or require-
22 ments with respect to activities of a registered
23 investment adviser other than with respect to
24 investment advisory activities or activities inci-
25 dental to investment advisory activities.

1 “(C) LIMITATIONS ON INDIRECT AC-
 2 TION.—In developing, establishing, or assessing
 3 bank holding company capital or capital ade-
 4 quacy rules, guidelines, standards, or require-
 5 ments for purposes of this paragraph, the
 6 Board may not take into account the activities,
 7 operations, or investments of an affiliated in-
 8 vestment company registered under the Invest-
 9 ment Company Act of 1940, if the investment
 10 company is not—

11 “(i) a bank holding company; or

12 “(ii) controlled by a bank holding
 13 company by reason of ownership by the
 14 bank holding company (including through
 15 all of its affiliates) of 25 percent or more
 16 of the shares of the investment company,
 17 where the shares owned by the bank hold-
 18 ing company have a market value equal to
 19 more than \$1,000,000.

20 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
 21 PROPRIATE FEDERAL BANKING AGENCY.—

22 “(A) IN GENERAL.—In the case of any
 23 bank holding company that is not significantly
 24 engaged in nonbanking activities, the Board, in
 25 consultation with the appropriate Federal bank-

ing agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

“(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act—

“(i) to examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under this section;

“(ii) to approve or disapprove applications or transactions under section 3;

“(iii) to take actions and impose penalties under subsections (e) and (f) of this section and under section 8; and

“(iv) to take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any

1 other statute that the Board may des-
2 ignate.

3 “(C) AGENCY ORDERS.—Section 9 of this
4 Act and section 105 of the Bank Holding Com-
5 pany Act Amendments of 1970 shall apply to
6 orders issued by an agency designated under
7 subparagraph (A) in the same manner as such
8 sections apply to orders issued by the Board.

9 “(5) FUNCTIONAL REGULATION OF SECURITIES
10 AND INSURANCE ACTIVITIES.—

11 “(A) SECURITIES ACTIVITIES.—Securities
12 activities conducted in a functionally regulated
13 subsidiary of a bank shall be subject to regula-
14 tion by the Securities and Exchange Commis-
15 sion, and by relevant State securities authori-
16 ties, as appropriate, subject to section 104 of
17 the Financial Services Modernization Act of
18 1999, to the same extent as if they were con-
19 ducted in a nondepository institution subsidiary
20 of a bank holding company.

21 “(B) INSURANCE ACTIVITIES.—Subject to
22 section 104 of the Financial Services Mod-
23 ernization Act of 1999, insurance agency and
24 brokerage activities and activities as principal
25 conducted in a functionally regulated subsidiary

1 of a bank shall be subject to regulation by a
2 State insurance authority to the same extent as
3 if they were conducted in a nondepository insti-
4 tution subsidiary of a bank holding company.

5 “(6) DEFINITION.—For purposes of this sub-
6 section, the term ‘functionally regulated subsidiary’
7 means any company—

8 “(A) that is not a bank holding company;

9 and

10 “(B) that is—

11 “(i) a broker or dealer that is reg-
12 istered under the Securities Exchange Act
13 of 1934;

14 “(ii) a registered investment adviser,
15 properly registered by or on behalf of ei-
16 ther the Securities and Exchange Commis-
17 sion or any State, with respect to the in-
18 vestment advisory activities of such invest-
19 ment adviser and activities incidental to
20 such investment advisory activities;

21 “(iii) an investment company that is
22 registered under the Investment Company
23 Act of 1940;

24 “(iv) an insurance company or insur-
25 ance agency that is subject to supervision

1 by a State insurance commission, agency,
2 or similar authority; or

3 “(v) an entity that is subject to regu-
4 lation by the Commodity Futures Trading
5 Commission, with respect to the commod-
6 ities activities of such entity and activities
7 incidental to such commodities activities.”.

8 **SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR**
9 **AND SECURITIES AND EXCHANGE COMMIS-**
10 **SION.**

11 Section 5 of the Bank Holding Company Act of 1956
12 (12 U.S.C. 1844) is amended by adding at the end the
13 following new subsection:

14 “(g) **AUTHORITY OF STATE INSURANCE REGULATOR**
15 **AND THE SECURITIES AND EXCHANGE COMMISSION.—**

16 “(1) **IN GENERAL.—**Notwithstanding any other
17 provision of law, any regulation, order, or other ac-
18 tion of the Board that requires a bank holding com-
19 pany to provide funds or other assets to an insured
20 depository institution subsidiary shall not be effec-
21 tive nor enforceable, if—

22 “(A) such funds or assets are to be pro-
23 vided by—

24 “(i) a bank holding company that is
25 an insurance company or that is a broker

1 or dealer registered under the Securities
2 Exchange Act of 1934; or

3 “(ii) an affiliate of the insured deposi-
4 tory institution that is an insurance com-
5 pany or a broker or dealer registered under
6 the Securities Exchange Act of 1934; and

7 “(B) the State insurance authority for the
8 insurance company or the Securities and Ex-
9 change Commission for the registered broker or
10 dealer, as the case may be, determines in a
11 written notice sent to the bank holding com-
12 pany and to the Board that the bank holding
13 company shall not provide such funds or assets
14 because such action would have a material ad-
15 verse effect on the financial condition of the in-
16 surance company or the broker or dealer, as the
17 case may be.

18 “(2) NOTICE TO STATE INSURANCE AUTHORITY
19 OR SEC REQUIRED.—If the Board requires a bank
20 holding company, or an affiliate of a bank holding
21 company, that is an insurance company or a broker
22 or dealer, as described in paragraph (1)(A), to pro-
23 vide funds or assets to an insured depository institu-
24 tion subsidiary of the bank holding company pursu-
25 ant to any regulation, order, or other action of the

1 Board referred to in paragraph (1), the Board shall
2 promptly notify the State insurance authority for the
3 insurance company or the Securities and Exchange
4 Commission, as the case may be, of such require-
5 ment.

6 “(3) DIVESTITURE IN LIEU OF OTHER AC-
7 TION.—If the Board receives a notice described in
8 paragraph (1)(B) from a State insurance authority
9 or the Securities and Exchange Commission with re-
10 gard to a bank holding company or affiliate referred
11 to in that paragraph, the Board may order the bank
12 holding company to divest the insured depository in-
13 stitution subsidiary not later than 180 days after re-
14 ceiving the notice, or such longer period as the
15 Board determines to be consistent with the safe and
16 sound operation of the insured depository institu-
17 tion.

18 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
19 ing the period beginning on the date on which an
20 order to divest is issued by the Board under para-
21 graph (3) to a bank holding company and ending on
22 the date on which the divestiture is completed, the
23 Board may impose any conditions or restrictions on
24 ownership or operation by the bank holding company
25 of the insured depository institution, including re-

1 stricting or prohibiting transactions between the in-
 2 sured depository institution and any affiliate of the
 3 institution, as are appropriate under the cir-
 4 cumstances.

5 “(5) RULE OF CONSTRUCTION.—No provision
 6 of this subsection may be construed to limit or oth-
 7 erwise affect the regulatory authority, including the
 8 scope of the authority, of any Federal agency or de-
 9 partment with regard to any entity that is within the
 10 jurisdiction of such agency or department.”.

11 **SEC. 113. ROLE OF THE BOARD OF GOVERNORS OF THE**
 12 **FEDERAL RESERVE SYSTEM.**

13 The Bank Holding Company Act of 1956 (12 U.S.C.
 14 1841 et seq.) is amended by inserting after section 10 the
 15 following new section:

16 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
 17 **PERVISORY, AND ENFORCEMENT AUTHORITY**
 18 **OF THE BOARD.**

19 “(a) LIMITATION ON DIRECT ACTION.—The Board
 20 may not prescribe regulations, issue or seek entry of or-
 21 ders, impose restraints, restrictions, guidelines, require-
 22 ments, safeguards, or standards, or otherwise take any ac-
 23 tion under or pursuant to any provision of this Act or sec-
 24 tion 8 of the Federal Deposit Insurance Act against or

1 with respect to a functionally regulated subsidiary of a
 2 bank holding company unless—

3 “(1) the action is necessary to prevent or re-
 4 dress an unsafe or unsound practice or breach of fi-
 5 duciary duty by such subsidiary that poses a mate-
 6 rial risk to—

7 “(A) the financial safety, soundness, or
 8 stability of an affiliated insured depository in-
 9 stitution; or

10 “(B) the domestic or international pay-
 11 ment system; and

12 “(2) the Board finds that it is not reasonably
 13 possible to protect effectively against the material
 14 risk at issue through action directed at or against
 15 the affiliated insured depository institution or
 16 against insured depository institutions generally.

17 “(b) LIMITATION ON INDIRECT ACTION.—The Board
 18 may not prescribe regulations, issue or seek entry of or-
 19 ders, impose restraints, restrictions, guidelines, require-
 20 ments, safeguards, or standards, or otherwise take any ac-
 21 tion under or pursuant to any provision of this Act or sec-
 22 tion 8 of the Federal Deposit Insurance Act against or
 23 with respect to a bank holding company where the purpose
 24 or effect of doing so would be to take action indirectly
 25 against or with respect to a functionally regulated sub-

1 subsidiary of a bank holding company that may not be taken
 2 directly against or with respect to such subsidiary in ac-
 3 cordance with subsection (a).

4 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
 5 withstanding subsection (a), the Board may take action
 6 under this Act or section 8 of the Federal Deposit Insur-
 7 ance Act to enforce compliance by a functionally regulated
 8 subsidiary of a bank holding company with Federal law
 9 that the Board has specific jurisdiction to enforce against
 10 such subsidiary.

11 “(d) ‘FUNCTIONALLY REGULATED SUBSIDIARY’ DE-
 12 FINED.—For purposes of this section, the term ‘function-
 13 ally regulated subsidiary’ has the same meaning as in sec-
 14 tion 5(c)(6).”.

15 **SEC. 114. EXAMINATION OF INVESTMENT COMPANIES.**

16 (a) EXCLUSIVE COMMISSION AUTHORITY.—Except
 17 as provided in subsection (c), a Federal banking agency
 18 may not inspect or examine any registered investment
 19 company that is not a bank holding company or a savings
 20 and loan holding company.

21 (b) EXAMINATION RESULTS AND OTHER INFORMA-
 22 TION.—The Commission shall provide to any Federal
 23 banking agency, upon request, the results of any examina-
 24 tion, reports, records, or other information with respect
 25 to any registered investment company to the extent nec-

1 essary for the agency to carry out its statutory responsibil-
2 ities.

3 (c) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
4 ing in this section shall prevent the Corporation, if the
5 Corporation finds it necessary to determine the condition
6 of an insured depository institution for insurance pur-
7 poses, from examining an affiliate of any insured deposi-
8 tory institution, pursuant to its authority under section
9 10(b)(4) of the Federal Deposit Insurance Act, as may
10 be necessary to disclose fully the relationship between the
11 insured depository institution and the affiliate, and the ef-
12 fect of such relationship on the insured depository institu-
13 tion.

14 (d) DEFINITIONS.—For purposes of this section, the
15 following definitions shall apply:

16 (1) BANK HOLDING COMPANY.—The term
17 “bank holding company” has the same meaning as
18 in section 2 of the Bank Holding Company Act of
19 1956.

20 (2) CORPORATION.—The term “Corporation”
21 means the Federal Deposit Insurance Corporation.

22 (3) COMMISSION.—The term “Commission”
23 means the Securities and Exchange Commission.

1 (4) FEDERAL BANKING AGENCY.—The term
2 “Federal banking agency” has the same meaning as
3 in section 3(z) of the Federal Deposit Insurance Act.

4 (5) REGISTERED INVESTMENT COMPANY.—The
5 term “registered investment company” means an in-
6 vestment company that is registered with the Com-
7 mission under the Investment Company Act of 1940.

8 (6) SAVINGS AND LOAN HOLDING COMPANY.—
9 The term “savings and loan holding company” has
10 the same meaning as in section 10(a)(1)(D) of the
11 Home Owners’ Loan Act.

12 **SEC. 115. EQUIVALENT REGULATION AND SUPERVISION.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, the provisions of—

15 (1) section 5(c) of the Bank Holding Company
16 Act of 1956 (as amended by this Act) that limit the
17 authority of the Board of Governors of the Federal
18 Reserve System to require reports from, to make ex-
19 aminations of, or to impose capital requirements on
20 holding companies and their functionally regulated
21 subsidiaries or that require deference to other regu-
22 lators;

23 (2) section 5(g) of the Bank Holding Company
24 Act of 1956 (as added by this Act) that limit the au-
25 thority of the Board to require capital from a func-

1 tionally regulated subsidiary of a holding company
2 to an insured depository institution subsidiary of the
3 holding company and to take certain actions includ-
4 ing requiring divestiture of the insured depository
5 institution; and

6 (3) section 10A of the Bank Holding Company
7 Act of 1956 (as added by this Act) that limit what-
8 ever authority the Board might otherwise have to
9 take direct or indirect action with respect to holding
10 companies and their functionally regulated subsidi-
11 aries,

12 shall also limit whatever authority that a Federal banking
13 agency (as defined in section 3 of the Federal Deposit In-
14 surance Act) might otherwise have under applicable Fed-
15 eral law to require reports, make examinations, impose
16 capital requirements, or take any other direct or indirect
17 action with respect to any functionally regulated sub-
18 sidiary of an insured depository institution, subject to the
19 same standards and requirements as are applicable to the
20 Board under those provisions.

21 (b) CERTAIN EXEMPTION AUTHORIZED.—Nothing in
22 this section shall prevent the Federal Deposit Insurance
23 Corporation, if the Corporation finds it necessary to deter-
24 mine the condition of an insured depository institution for
25 insurance purposes, from examining an affiliate of any in-

1 sured depository institution, pursuant to its authority
 2 under section 10(b)(4) of the Federal Deposit Insurance
 3 Act, as may be necessary to disclose fully the relationship
 4 between the depository institution and the affiliate, and
 5 the effect of such relationship on the depository institu-
 6 tion.

7 (c) “FUNCTIONALLY REGULATED SUBSIDIARY” DE-
 8 FINED.—For purposes of this section, the term “function-
 9 ally regulated subsidiary” has the same meaning as in sec-
 10 tion 5(c)(6) of the Bank Holding Company Act of 1956,
 11 as amended by this Act.

12 **SEC. 116. INTERAGENCY CONSULTATION.**

13 (a) EXAMINATION RESULTS AND OTHER INFORMA-
 14 TION.—

15 (1) INFORMATION OF THE BOARD.—Upon the
 16 request of the appropriate insurance regulator of
 17 any State, the Board may provide to that regulator
 18 any information of the Board regarding the financial
 19 condition, risk management policies, and operations
 20 of any bank holding company that controls a com-
 21 pany that is engaged in insurance activities and is
 22 regulated by that State insurance regulator, and re-
 23 garding any transaction or relationship between such
 24 an insurance company and any affiliated depository
 25 institution. The Board may provide any other infor-

1 mation to the appropriate State insurance regulator
2 that the Board believes is necessary or appropriate
3 to permit the State insurance regulator to admin-
4 ister and enforce applicable State insurance laws.

5 (2) BANKING AGENCY INFORMATION.—Upon
6 the request of the appropriate insurance regulator of
7 any State, the appropriate Federal banking agency
8 may provide to that regulator any information of the
9 agency regarding any transaction or relationship be-
10 tween a depository institution supervised by that
11 Federal banking agency and any affiliated company
12 that is engaged in insurance activities regulated by
13 the State insurance regulator. The appropriate Fed-
14 eral banking agency may provide any other informa-
15 tion to the appropriate State insurance regulator
16 that the agency believes is necessary or appropriate
17 to permit the State insurance regulator to admin-
18 ister and enforce applicable State insurance laws.

19 (3) STATE INSURANCE REGULATOR INFORMA-
20 TION.—Upon the request of the appropriate Federal
21 banking agency, a State insurance regulator may
22 provide any examination or other reports, records, or
23 other information to which the State insurance regu-
24 lator may have access with respect to a company
25 that—

1 (A) is engaged in insurance activities and
2 is regulated by that insurance regulator; and

3 (B) is an affiliate of an insured depository
4 institution or a bank holding company.

5 (b) CONSULTATION.—Before making any determina-
6 tion relating to the initial affiliation of, or the continuing
7 affiliation of, an insured depository institution or bank
8 holding company with a company engaged in insurance ac-
9 tivities, the appropriate Federal banking agency shall con-
10 sult with the appropriate State insurance regulator of such
11 company and take the views of such insurance regulator
12 into account in making such determination.

13 (c) EFFECT ON OTHER AUTHORITY.—Nothing in
14 this section shall limit in any respect the authority of the
15 appropriate Federal banking agency with respect to an in-
16 sured depository institution or bank holding company or
17 any affiliate thereof under any provision of law.

18 (d) CONFIDENTIALITY AND PRIVILEGE.—

19 (1) CONFIDENTIALITY.—The appropriate Fed-
20 eral banking agency may not provide any informa-
21 tion or material that is entitled to confidential treat-
22 ment under applicable Federal banking agency regu-
23 lations, or other applicable law, to a State insurance
24 regulator, unless such regulator agrees to maintain
25 the information or material in confidence and to

1 take all reasonable steps to oppose any effort to se-
2 cure disclosure of the information or material by the
3 regulator. The appropriate Federal banking agency
4 shall treat as confidential any information or mate-
5 rial obtained from a State insurance regulator that
6 is entitled to confidential treatment under applicable
7 State regulations, or other applicable law, and take
8 all reasonable steps to oppose any effort to secure
9 disclosure of the information or material by the Fed-
10 eral banking agency.

11 (2) PRIVILEGE.—The provision pursuant to this
12 section of information or material by a Federal
13 banking agency or a State insurance regulator shall
14 not constitute a waiver of, or otherwise affect, any
15 privilege to which the information or material is oth-
16 erwise subject.

17 (e) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 (1) APPROPRIATE FEDERAL BANKING AGENCY;
20 INSURED DEPOSITORY INSTITUTION.—The terms
21 “appropriate Federal banking agency” and “insured
22 depository institution” have the same meanings as
23 in section 3 of the Federal Deposit Insurance Act.

24 (2) BOARD; BANK HOLDING COMPANY.—The
25 terms “Board” and “bank holding company” have

1 the same meanings as in section 2 of the Bank
 2 Holding Company Act of 1956.

3 **SEC. 117. PRESERVING THE INTEGRITY OF FDIC RE-**
 4 **SOURCES.**

5 Section 11(a)(4)(B) of the Federal Deposit Insurance
 6 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
 7 benefit any shareholder of” and inserting “to benefit any
 8 shareholder, affiliate (other than an insured depository in-
 9 stitution that receives assistance in accordance with the
 10 provisions of this Act), or subsidiary of”.

11 **Subtitle C—Activities of National**
 12 **Banks**

13 **SEC. 121. AUTHORITY OF NATIONAL BANKS TO UNDER-**
 14 **WRITE MUNICIPAL REVENUE BONDS.**

15 The paragraph designated the Seventh of section
 16 5136 of the Revised Statutes of the United States (12
 17 U.S.C. 24(7)) is amended by adding at the end the fol-
 18 lowing:

19 “The limitations and restrictions contained in this
 20 paragraph as to dealing in, underwriting, and purchasing
 21 investment securities for the national bank’s own account
 22 do not apply to obligations (including limited obligation
 23 bonds, revenue bonds, and obligations that satisfy the re-
 24 quirements of section 142(b)(1) of the Internal Revenue
 25 Code of 1986) issued by or on behalf of any State or polit-

1 ical subdivision of a State, including any municipal cor-
 2 porate instrumentality of 1 or more States, or any public
 3 agency or authority of any State or political subdivision
 4 of a State, if the national banking association is well cap-
 5 italized (as defined in section 38 of the Federal Deposit
 6 Insurance Act).”.

7 **SEC. 122. SUBSIDIARIES OF NATIONAL BANKS.**

8 (a) IN GENERAL.—Chapter one of title LXII of the
 9 Revised Statutes of the United States (12 U.S.C. 21 et
 10 seq.) is amended—

11 (1) by redesignating section 5136A as section
 12 5136C; and

13 (2) by inserting after section 5136 (12 U.S.C.
 14 24) the following new section:

15 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

16 **“(a) AUTHORIZATION TO CONDUCT IN OPERATING**
 17 **SUBSIDIARIES CERTAIN ACTIVITIES THAT ARE FINAN-**
 18 **CIAL IN NATURE.—**

19 **“(1) IN GENERAL.—**Subject to paragraph (2), a
 20 national bank may control a financial subsidiary, or
 21 hold an interest in a financial subsidiary, only if—

22 **“(A)** the consolidated total assets of the
 23 national bank do not exceed \$1,000,000,000;

24 **“(B)** the national bank is not an affiliate
 25 of a bank holding company;

1 “(C) the subject activities are not real es-
 2 tate development or real estate investment ac-
 3 tivities, unless otherwise expressly authorized by
 4 law;

5 “(D) the national bank and each insured
 6 depository institution affiliate of the national
 7 bank is well capitalized and well managed; and

8 “(E) the national bank has received the
 9 approval of the Comptroller of the Currency to
 10 engage in such activities, which approval shall
 11 be based solely upon the factors set forth in
 12 subparagraph (D) and factors set forth in sub-
 13 section (c).

14 “(2) REGULATIONS REQUIRED.—The Comp-
 15 troller of the Currency shall, by regulation, prescribe
 16 procedures for the enforcement of this section.

17 “(b) SAFETY AND SOUNDNESS FIRE WALLS.—

18 “(1) CAPITAL REDUCTION REQUIRED.—In de-
 19 termining compliance with applicable capital stand-
 20 ards for purposes of subsection (a)(1)(D)—

21 “(A) the aggregate amount of outstanding
 22 equity investments by a national bank in a fi-
 23 nancial subsidiary shall be deducted from the
 24 assets and tangible equity of the national bank;
 25 and

1 “(B) the assets and liabilities of the finan-
2 cial subsidiary shall not be consolidated with
3 those of the national bank.

4 “(2) INVESTMENT LIMITATION.—A national
5 bank may not, without the prior approval of the
6 Comptroller of the Currency, make any equity in-
7 vestment in a financial subsidiary of the bank if that
8 investment would, when made, exceed the amount
9 that the national bank could pay as a dividend with-
10 out obtaining prior regulatory approval.

11 “(c) SAFEGUARDS FOR THE BANK.—A national bank
12 that establishes or maintains a financial subsidiary shall
13 assure that—

14 “(1) the procedures of the national bank for
15 identifying and managing financial and operational
16 risks within the national bank and financial sub-
17 sidiary adequately protect the national bank from
18 such risks;

19 “(2) the bank has, for the protection of the na-
20 tional bank, reasonable policies and procedures to
21 preserve the separate corporate identity and limited
22 liability of the national bank and the financial sub-
23 sidiaries of the national bank; and

24 “(3) the national bank is in compliance with
25 this section.

1 “(d) STREAMLINING REGULATION AND SUPERVISION
2 AND ENCOURAGING CONSULTATION AMONG FEDERAL
3 AND STATE REGULATORS.—

4 “(1) IN GENERAL.—To the extent that a na-
5 tional bank engages in activities that are authorized
6 by subsection (a) through a functionally regulated fi-
7 nancial subsidiary, the regulation and supervision of
8 such subsidiary by the Comptroller of the Currency,
9 including its ability to require a contribution of cap-
10 ital or assets to the national bank from that func-
11 tionally regulated financial subsidiary, shall be lim-
12 ited, as set forth under section 115 of the Financial
13 Services Modernization Act of 1999.

14 “(2) INTERAGENCY CONSULTATION.—The pro-
15 visions of section 116 of the Financial Services Mod-
16 ernization Act of 1999, relating to interagency con-
17 sultation, shall apply to the Comptroller of the Cur-
18 rency and the appropriate State regulators of func-
19 tionally regulated financial subsidiaries of a national
20 bank.

21 “(e) PRESERVATION OF EXISTING OPERATING SUB-
22 SIDIARY AUTHORITY.—Notwithstanding any other provi-
23 sion of this section—

24 “(1) a national bank may retain control of a
25 company, or retain an interest in a company, and

1 conduct through such company any activities law-
 2 fully conducted therein as of the date of enactment
 3 of the Financial Services Modernization Act of 1999;
 4 and

5 “(2) a national bank may own shares of or any
 6 other interest in any company that is engaged only
 7 in activities that are permissible for the national
 8 bank to engage in directly, if such activities are en-
 9 gaged in under the same terms and conditions that
 10 would govern the conduct if conducted by a national
 11 bank directly.

12 “(f) DEFINITIONS.—For purposes of this section, the
 13 following definitions shall apply:

14 “(1) FINANCIAL SUBSIDIARY.—The term ‘fi-
 15 nancial subsidiary’ means a company that—

16 “(A) is a subsidiary of a national bank;
 17 and

18 “(B) is engaged as principal in any activity
 19 that is permissible for a bank holding company
 20 under section 4(k) of the Bank Holding Com-
 21 pany Act of 1956 and is not permissible for na-
 22 tional banks to engage in directly.

23 “(2) FUNCTIONALLY REGULATED.—The term
 24 ‘functionally regulated financial subsidiary’ means a
 25 financial subsidiary that is—

1 “(A) a broker or dealer that is registered
2 under the Securities Exchange Act of 1934;

3 “(B) an investment adviser that is reg-
4 istered under the Investment Advisers Act of
5 1940, or with any State, with respect to the in-
6 vestment advisory activities of such investment
7 adviser and activities incidental to such invest-
8 ment advisory activities;

9 “(C) an insurance company that is subject
10 to supervision by a State insurance commission,
11 agency, or similar authority; and

12 “(D) an entity that is subject to regulation
13 by the Commodity Futures Trading Commis-
14 sion, with respect to the commodities activities
15 of such entity and activities incidental to such
16 commodities activities.

17 “(3) SUBSIDIARY.—The term ‘subsidiary’ has
18 the same meaning as in section 2 of the Bank Hold-
19 ing Company Act of 1956.

20 “(4) WELL CAPITALIZED.—The term ‘well cap-
21 italized’ has the same meaning as in section 38 of
22 the Federal Deposit Insurance Act.

23 “(5) WELL MANAGED.—The term ‘well man-
24 aged’ means—

1 “(A) in the case of a depository institution
 2 that has been examined, unless otherwise deter-
 3 mined in writing by the appropriate Federal
 4 banking agency—

5 “(i) the achievement of a composite
 6 rating of 1 or 2 under the Uniform Finan-
 7 cial Institutions Rating System (or an
 8 equivalent rating under an equivalent rat-
 9 ing system) in connection with the most re-
 10 cent examination or subsequent review of
 11 the depository institution; and

12 “(ii) at least a rating of 2 for man-
 13 agement, if such rating is given; or

14 “(B) in the case of any depository institu-
 15 tion that has not been examined, the existence
 16 and use of managerial resources that the appro-
 17 priate Federal banking agency determines are
 18 satisfactory.

19 “(6) INCORPORATED DEFINITIONS.—The terms
 20 ‘appropriate Federal banking agency’, ‘depository in-
 21 stitution’, and ‘insured depository institution’, have
 22 the same meanings as in section 3 of the Federal
 23 Deposit Insurance Act.”.

24 (b) LIMITING THE CREDIT EXPOSURE OF A NA-
 25 TIONAL BANK TO A FINANCIAL SUBSIDIARY TO THE

1 AMOUNT OF PERMISSIBLE CREDIT EXPOSURE TO AN AF-
 2 FILIATE.—Section 23A of the Federal Reserve Act (12
 3 U.S.C. 371e) is amended—

4 (1) by redesignating subsection (e) as sub-
 5 section (f); and

6 (2) by inserting after subsection (d), the fol-
 7 lowing new subsection:

8 “(e) RULES RELATING TO NATIONAL BANKS WITH
 9 FINANCIAL SUBSIDIARIES.—

10 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
 11 purposes of this section and section 23B, the term
 12 ‘financial subsidiary’ has the same meaning as in
 13 section 5136A(f) of the Revised Statutes of the
 14 United States.

15 “(2) APPLICATION TO TRANSACTIONS BETWEEN
 16 A FINANCIAL SUBSIDIARY OF A NATIONAL BANK AND
 17 THE NATIONAL BANK.—For purposes of applying
 18 this section and section 23B to a transaction be-
 19 tween a financial subsidiary of a national bank and
 20 the national bank (or between such financial sub-
 21 sidiary and any other subsidiary of the national
 22 bank that is not a financial subsidiary), and not-
 23 withstanding subsection (b)(2) of this section or sec-
 24 tion 23B(d)(1)—

1 “(A) the financial subsidiary of the na-
2 tional bank—

3 “(i) shall be deemed to be an affiliate
4 of the national bank and of any other sub-
5 sidiary of the bank that is not a financial
6 subsidiary; and

7 “(ii) shall not be deemed to be a sub-
8 sidiary of the national bank; and

9 “(B) a purchase of or investment in equity
10 securities issued by the financial subsidiary
11 shall not be deemed to be a covered transaction.

12 “(3) APPLICATION TO TRANSACTIONS BETWEEN
13 FINANCIAL SUBSIDIARY AND NONBANK AFFILI-
14 ATES.—

15 “(A) IN GENERAL.—A transaction between
16 a financial subsidiary and an affiliate of the fi-
17 nancial subsidiary (that is not a subsidiary of
18 a national bank) shall not be deemed to be a
19 transaction between a subsidiary of a national
20 bank and an affiliate of that bank for purposes
21 of section 23A or section 23B.

22 “(B) CERTAIN AFFILIATES EXCLUDED.—
23 For purposes of this paragraph, the term ‘affil-
24 iate’ does not include a national bank, or a sub-
25 sidiary of a national bank that is engaged ex-

1 clusively in activities permissible for a national
 2 bank to engage in directly or agency activities
 3 permitted under section 123 of the Financial
 4 Services Modernization Act of 1999.”.

5 (c) ANTITYING.—Section 106(a) of the Bank Holding
 6 Company Act Amendments of 1970 (12 U.S.C. 1971) is
 7 amended by adding at the end the following: “For pur-
 8 poses of this section, a financial subsidiary of a national
 9 bank engaging in activities pursuant to section 5136A(a)
 10 of the Revised Statutes of the United States shall be
 11 deemed to be a subsidiary of a bank holding company, and
 12 not a subsidiary of a bank.”.

13 (d) CLERICAL AMENDMENT.—The table of sections
 14 for chapter one of title LXII of the Revised Statutes of
 15 the United States is amended—

16 (1) by redesignating the item relating to section
 17 5136A as relating to section 5136C; and

18 (2) by inserting after the item relating to sec-
 19 tion 5136 the following new item:

“5136A. Subsidiaries of national banks.”.

20 **SEC. 123. AGENCY ACTIVITIES.**

21 A national bank may control a company, or hold an
 22 interest in a company that engages in agency activities
 23 that have been determined by the Comptroller of the Cur-
 24 rency to be permissible for national banks or to be finan-
 25 cial in nature or incidental to such financial activities (as

1 determined pursuant to section 4(k) of the Bank Holding
 2 Company Act of 1956) if the company engages in such
 3 activities solely as agent and not directly or indirectly as
 4 principal.

5 **SEC. 124. PROHIBITING FRAUDULENT REPRESENTATIONS.**

6 (a) IN GENERAL.—Chapter 47 of title 18, United
 7 States Code, is amended by inserting after section 1007
 8 the following new section:

9 **“SEC. 1008. MISREPRESENTATIONS REGARDING FINANCIAL**
 10 **INSTITUTION LIABILITY FOR OBLIGATIONS**
 11 **OF AFFILIATES.**

12 “(a) PROHIBITION.—It shall be unlawful for an insti-
 13 tution-affiliated party of an insured depository institution
 14 or institution-affiliated party of a subsidiary or affiliate
 15 of an insured depository institution to fraudulently rep-
 16 resent that the institution is or will be liable for any obli-
 17 gation of a subsidiary or other affiliate of the institution.

18 “(b) PENALTIES.—Whoever violates subsection (a)
 19 shall be fined under this title, imprisoned not more than
 20 1 year, or both.

21 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
 22 For purposes of this section, the term ‘institution-affili-
 23 ated party’ has the same meaning as in section 3 of the
 24 Federal Deposit Insurance Act, except that references to
 25 an insured depository institution shall be deemed to in-

1 clude references to a subsidiary or affiliate of an insured
2 depository institution.

3 “(d) OTHER DEFINITIONS.—For purposes of this
4 section, the terms ‘affiliate’, ‘insured depository institu-
5 tion’, and ‘subsidiary’ have same meanings as in section
6 3 of the Federal Deposit Insurance Act.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for chapter 47 of title 18, United States Code, is amended
9 by inserting after the item relating to section 1007 the
10 following new item:

“1008. Misrepresentations regarding financial institution liability for obligations
of affiliates.”.

11 **SEC. 125. INSURANCE UNDERWRITING BY NATIONAL**
12 **BANKS.**

13 (a) IN GENERAL.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), a national bank and the subsidiaries of a
16 national bank may only provide insurance in a State
17 as principal in accordance with section 5136A(a) of
18 the Revised Statutes of the United States, as added
19 by this Act.

20 (2) EXCEPTION.—A national bank and the sub-
21 sidiaries of a national bank may provide authorized
22 insurance products as principal without regard to
23 section 5136A(a) of the Revised Statutes of the
24 United States, as added by this Act.

1 (b) AUTHORIZED INSURANCE PRODUCTS.—For pur-
 2 poses of this section, a product is an “authorized insur-
 3 ance product” if—

4 (1) as of January 1, 1999, the Comptroller of
 5 the Currency had determined in writing that na-
 6 tional banks may provide such product as principal,
 7 or national banks were in fact lawfully providing
 8 such product as principal;

9 (2) no court of relevant jurisdiction had, by
 10 final judgment, overturned a determination of the
 11 Comptroller of the Currency that national banks
 12 may provide such product as principal; and

13 (3) the product is not an annuity contract, the
 14 income of which is subject to tax treatment under
 15 section 72 of the Internal Revenue Code of 1986.

16 (c) DEFINITION.—For purposes of this section, the
 17 term “insurance” means—

18 (1) any product regulated as insurance as of
 19 January 1, 1999, in accordance with the relevant
 20 State insurance law, in the State in which the prod-
 21 uct is provided;

22 (2) any product first offered after January 1,
 23 1999, which—

24 (A) a State insurance regulator determines
 25 shall be regulated as insurance in the State in

1 which the product is provided because the prod-
2 uct insures, guarantees, or indemnifies against
3 liability, loss of life, loss of health, or loss
4 through damage to or destruction of property,
5 including surety bonds, life insurance, health in-
6 surance, title insurance, and property and cas-
7 ualty insurance (such as private passenger or
8 commercial automobile, homeowners, mortgage,
9 commercial multiperil, general liability, profes-
10 sional liability, workers' compensation, fire and
11 allied lines, farm owners multiperil, aircraft, fi-
12 delity, surety, medical malpractice, ocean ma-
13 rine, inland marine, and boiler and machinery
14 insurance); and

15 (B) is not a product or service of a bank
16 that is—

- 17 (i) a deposit product;
18 (ii) a loan, discount, letter of credit,
19 or other extension of credit;
20 (iii) a trust or other fiduciary service;
21 (iv) a qualified financial contract (as
22 defined in or determined pursuant to sec-
23 tion 11(e)(8)(D)(i) of the Federal Deposit
24 Insurance Act); or

1 (v) a financial guaranty, except that
2 this subparagraph shall not apply to a
3 product that includes an insurance compo-
4 nent such that if the product is offered or
5 proposed to be offered by the bank as
6 principal—

7 (I) it would be treated as a life
8 insurance contract under section 7702
9 of the Internal Revenue Code of 1986;
10 or

11 (II) in the event that the product
12 is not a letter of credit or other simi-
13 lar extension of credit, a qualified fi-
14 nancial contract, or a financial guar-
15 anty, it would qualify for treatment
16 for losses incurred with respect to
17 such product under section 832(b)(5)
18 of the Internal Revenue Code of 1986,
19 if the bank were subject to tax as an
20 insurance company under section 831
21 of that Code; and

22 (3) any annuity contract, the income on which
23 is subject to tax treatment under section 72 of the
24 Internal Revenue Code of 1986.

1 **Subtitle D—National Treatment of** 2 **Foreign Financial Institutions**

3 **SEC. 151. NATIONAL TREATMENT OF FOREIGN FINANCIAL** 4 **INSTITUTIONS.**

5 Section 8(c) of the International Banking Act of
 6 1978 (12 U.S.C. 3106(c)) is amended by adding at the
 7 end the following new paragraph:

8 “(3) **TERMINATION OF GRANDFATHERED RIGHTS.**—

9 “(A) **IN GENERAL.**—If any foreign bank or for-
 10 eign company files a declaration under section 4() of
 11 the Bank Holding Company Act of 1956, any au-
 12 thority conferred by this subsection on any foreign
 13 bank or company to engage in any activity that the
 14 Board has determined to be permissible for bank
 15 holding companies under section 4(k) of that Act
 16 shall terminate immediately.

17 “(B) **RESTRICTIONS AND REQUIREMENTS AU-**
 18 **THORIZED.**—If a foreign bank or company that en-
 19 engages, directly or through an affiliate pursuant to
 20 paragraph (1), in an activity that the Board deter-
 21 mines to be permissible for bank holding companies
 22 under section 4(k) of the Bank Holding Company
 23 Act of 1956, has not filed a declaration with the
 24 Board of its status as a bank holding company
 25 under section 4(l) of that Act by the end of the 2-

1 year period beginning on the date of enactment of
2 the Financial Services Modernization Act of 1999,
3 the Board, giving due regard to the principle of na-
4 tional treatment and equality of competitive oppor-
5 tunity, may impose such restrictions and require-
6 ments on the conduct of such activities by such for-
7 eign bank or company as are comparable to those
8 imposed on a bank holding company organized
9 under the laws of the United States, including a re-
10 quirement to conduct such activities in compliance
11 with any prudential safeguards established under
12 section 10A of the Bank Holding Company Act of
13 1956.”.

14 **SEC. 152. REPRESENTATIVE OFFICES.**

15 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
16 Section 1(b)(15) of the International Banking Act of 1978
17 (12 U.S.C. 3101(15)) is amended by striking “State agen-
18 cy, or subsidiary of a foreign bank” and inserting “or
19 State agency”.

20 (b) EXAMINATIONS.—Section 10(c) of the Inter-
21 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
22 amended by adding at the end the following: “The Board
23 may also make examinations of any affiliate of a foreign
24 bank conducting business in any State, if the Board deems
25 it necessary to determine and enforce compliance with this

1 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
2 1841 et seq.), or other applicable Federal banking law.”.

3 **TITLE II—INSURANCE** 4 **CUSTOMER PROTECTIONS**

5 **SEC. 201. FUNCTIONAL REGULATION OF INSURANCE.**

6 The insurance activity of any person or entity shall
7 be functionally regulated by the States, subject to sub-
8 sections (c), (d), and (e) of section 104.

9 **SEC. 202. INSURANCE CUSTOMER PROTECTIONS.**

10 The Federal Deposit Insurance Act (12 U.S.C. 1811
11 et seq.) is amended by adding at the end the following
12 new section:

13 **“SEC. 45. INSURANCE CUSTOMER PROTECTIONS.**

14 **“(a) REGULATIONS REQUIRED.—**

15 **“(1) IN GENERAL.—**The Federal banking agen-
16 cies shall prescribe and publish in final form, before
17 the end of the 1-year period beginning on the date
18 of enactment of the Financial Services Moderniza-
19 tion Act of 1999, customer protection regulations
20 (which the agencies jointly determine to be appro-
21 priate) that—

22 **“(A)** apply to retail sales practices, solici-
23 tations, advertising, or offers of any insurance
24 product by any insured depository institution or
25 any person that is engaged in such activities at

1 an office of the institution or on behalf of the
2 institution; and

3 “(B) are consistent with the requirements
4 of this Act and provide such additional protec-
5 tions for customers to whom such sales, solicita-
6 tions, advertising, or offers are directed.

7 “(2) APPLICABILITY TO SUBSIDIARIES.—The
8 regulations prescribed pursuant to paragraph (1)
9 shall extend such protections to any subsidiaries of
10 an insured depository institution as deemed appro-
11 priate by the Federal banking agencies, where such
12 extension is determined to be necessary to ensure
13 the customer protections provided by this section.

14 “(3) CONSULTATION AND JOINT REGULA-
15 TIONS.—The Federal banking agencies shall consult
16 with each other and prescribe joint regulations pur-
17 suant to paragraph (1), after consultation with the
18 State insurance regulators, as appropriate.

19 “(b) SALES PRACTICES.—The regulations prescribed
20 pursuant to subsection (a) shall include antitying and
21 anticoercion rules applicable to the sale of insurance prod-
22 ucts that prohibit an insured depository institution from
23 engaging in any practice that would lead a customer to
24 believe an extension of credit, in violation of section 106(b)

1 of the Bank Holding Company Act Amendments of 1970,
2 is conditional upon—

3 “(1) the purchase of an insurance product from
4 the institution or any of its affiliates or subsidiaries;
5 or

6 “(2) an agreement by the customer not to ob-
7 tain, or a prohibition on the customer from obtain-
8 ing, an insurance product from an unaffiliated enti-
9 ty.

10 “(c) DISCLOSURES AND ADVERTISING.—The regula-
11 tions prescribed pursuant to subsection (a) shall include
12 the following provisions relating to disclosures and adver-
13 tising in connection with the initial purchase of an insur-
14 ance product:

15 “(1) DISCLOSURES.—

16 “(A) IN GENERAL.—Requirements that the
17 following disclosures be made orally and in writ-
18 ing before the completion of the initial sale and,
19 in the case of clauses (iii) and (iv), at the time
20 of application for an extension of credit:

21 “(i) UNINSURED STATUS.—As appro-
22 priate, the product is not insured by the
23 Federal Deposit Insurance Corporation,
24 the United States Government, or the in-
25 sured depository institution.

1 “(ii) INVESTMENT RISK.—In the case
 2 of a variable annuity or insurance product
 3 that involves an investment risk, that there
 4 is an investment risk associated with the
 5 product, including possible loss of value.

6 “(iii) ANTITYING; ANTICOERCION.—
 7 The approval of an extension of credit may
 8 not be conditioned on—

9 “(I) the purchase of an insurance
 10 product from the institution in which
 11 the application for credit is pending or
 12 any of its affiliates or subsidiaries; or

13 “(II) an agreement by the cus-
 14 tomer not to obtain, or a prohibition
 15 on the customer from obtaining, an
 16 insurance product from an unaffili-
 17 ated entity.

18 “(iv) PROHIBITION ON ENHANCED
 19 TREATMENT DUE TO OTHER PURCHASES
 20 OR SERVICES.—The processing of an ex-
 21 tension of credit or the delivery of any
 22 other financial product or service will not
 23 be expedited depending upon the purchase
 24 by the customer of any additional product

1 or service from an affiliated person or enti-
2 ty of the insured depository institution.

3 “(B) MAKING DISCLOSURE READILY UN-
4 DERSTANDABLE.—Regulations prescribed under
5 subparagraph (A) shall encourage the use of
6 disclosure that is conspicuous, simple, direct,
7 and readily understandable, such as the fol-
8 lowing:

9 “(i) ‘NOT FDIC–INSURED’.

10 “(ii) ‘NOT GUARANTEED BY THE
11 BANK’.

12 “(iii) ‘MAY GO DOWN IN VALUE’.

13 “(C) LIMITATION.—Nothing in this para-
14 graph requires the inclusion of the foregoing
15 disclosures in advertisements of a general na-
16 ture describing or listing the services or prod-
17 ucts offered by an institution.

18 “(D) MEANINGFUL DISCLOSURES.—Disclo-
19 sures shall not be considered to be meaningfully
20 provided under this paragraph if the institution
21 or its representative states that disclosures re-
22 quired by this subsection were available to the
23 customer in printed material available for dis-
24 tribution, where such printed material is not

1 provided and such information is not orally dis-
 2 closed to the customer.

3 “(E) ADJUSTMENTS FOR ALTERNATIVE
 4 METHODS OF PURCHASE.—In prescribing the
 5 requirements under subparagraphs (A) and (F),
 6 necessary adjustments shall be made for pur-
 7 chase in person, by telephone, or by electronic
 8 media to provide for the most appropriate and
 9 complete form of disclosure and acknowledg-
 10 ments.

11 “(F) CUSTOMER ACKNOWLEDGMENT.—A
 12 requirement that an insured depository institu-
 13 tion shall require any person selling an insur-
 14 ance product at any office of, or on behalf of,
 15 the institution to obtain, at the time at which
 16 a customer receives the disclosures required
 17 under this paragraph or at the time of the ini-
 18 tial purchase by the customer of such product,
 19 an acknowledgment by such customer of the re-
 20 ceipt of the disclosure required under this para-
 21 graph with respect to such product.

22 “(2) PROHIBITION ON MISREPRESENTA-
 23 TIONS.—A prohibition on any practice, or any adver-
 24 tising, at any office of, or on behalf of, the insured
 25 depository institution, or any subsidiary, as appro-

1 priate, that could mislead any person or otherwise
 2 cause a reasonable person to reach an erroneous be-
 3 lief with respect to—

4 “(A) the uninsured nature of any insur-
 5 ance product sold, or offered for sale, by the in-
 6 stitution or any subsidiary of the institution; or

7 “(B) in the case of a variable annuity or
 8 insurance product that involves an investment
 9 risk, the investment risk associated with any
 10 such product.

11 “(d) SEPARATION OF BANKING AND NONBANKING
 12 ACTIVITIES.—

13 “(1) REGULATIONS REQUIRED.—The regula-
 14 tions prescribed pursuant to subsection (a) shall in-
 15 clude such provisions as the Federal banking agen-
 16 cies consider appropriate to ensure that the routine
 17 acceptance of deposits is kept, to the extent prac-
 18 ticable, physically segregated from insurance product
 19 activity.

20 “(2) REQUIREMENTS.—Regulations prescribed
 21 pursuant to paragraph (1) shall include the fol-
 22 lowing requirements:

23 “(A) SEPARATE SETTING.—A clear delin-
 24 eation of the setting in which, and the cir-
 25 cumstances under which, transactions involving

1 insurance products should be conducted in a lo-
2 cation physically segregated from an area where
3 retail deposits are routinely accepted.

4 “(B) REFERRALS.—Standards that permit
5 any person accepting deposits from the public
6 in an area where such transactions are rou-
7 tinely conducted in an insured depository insti-
8 tution to refer a customer who seeks to pur-
9 chase any insurance product to a qualified per-
10 son who sells such product, only if the person
11 making the referral receives no more than a
12 one-time nominal fee of a fixed dollar amount
13 for each referral that does not depend on
14 whether the referral results in a transaction.

15 “(C) QUALIFICATION AND LICENSING RE-
16 QUIREMENTS.—Standards prohibiting any in-
17 sured depository institution from permitting
18 any person to sell or offer for sale any insur-
19 ance product in any part of any office of the in-
20 stitution, or on behalf of the institution, unless
21 such person is appropriately qualified and li-
22 censed.

23 “(e) EFFECT ON OTHER AUTHORITY.—

1 “(1) IN GENERAL.—No provision of this section
2 shall be construed as granting, limiting, or otherwise
3 affecting—

4 “(A) any authority of the Securities and
5 Exchange Commission, any self-regulatory or-
6 ganization, the Municipal Securities Rule-
7 making Board, or the Secretary of the Treasury
8 under any Federal securities law; or

9 “(B) except as provided in paragraph (2),
10 any authority of any State insurance commis-
11 sion (or any agency or office performing like
12 functions), or of any State securities commis-
13 sion (or any agency or office performing like
14 functions), or other State authority under any
15 State law.

16 “(2) COORDINATION WITH STATE LAW.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), insurance customer protec-
19 tion regulations prescribed by a Federal bank-
20 ing agency under this section shall not apply to
21 retail sales, solicitations, advertising, or offers
22 of any insurance product by any insured deposi-
23 tory institution or to any person who is engaged
24 in such activities at an office of such institution
25 or on behalf of the institution, in a State where

1 the State has in effect statutes, regulations, or-
2 ders, or interpretations, that are inconsistent
3 with or contrary to the regulations prescribed
4 by the Federal banking agencies.

5 “(B) PREEMPTION.—

6 “(i) IN GENERAL.—If, with respect to
7 any provision of the regulations prescribed
8 under this section, the Board of Governors
9 of the Federal Reserve System, the Comp-
10 troller of the Currency, and the Board of
11 Directors of the Corporation determine
12 jointly that the protection afforded by such
13 provision for customers is greater than the
14 protection provided by a comparable provi-
15 sion of the statutes, regulations, orders, or
16 interpretations referred to in subparagraph
17 (A) of any State, the appropriate State
18 regulatory authority shall be notified of
19 such determination in writing.

20 “(ii) CONSIDERATIONS.—Before mak-
21 ing a final determination under clause (i),
22 the Federal agencies referred to in clause
23 (i) shall give appropriate consideration to
24 comments submitted by the appropriate
25 State regulatory authorities relating to the

level of protection afforded to consumers under State law.

“(iii) FEDERAL PREEMPTION AND ABILITY OF STATES TO OVERRIDE FEDERAL PREEMPTION.—If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

“(f) NON-DISCRIMINATION AGAINST NON-AFFILIATED AGENTS.—The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) shall not have the practical effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with an insured depository institution.”.

1 **SEC. 203. FEDERAL AND STATE DISPUTE RESOLUTION.**

2 (a) FILING IN COURT OF APPEALS.—In the case of
3 a regulatory conflict between a State insurance regulator
4 and a Federal regulator regarding insurance issues, in-
5 cluding whether a State law, rule, regulation, order, or in-
6 terpretation regarding any insurance sales or solicitation
7 activity is properly treated as preempted under Federal
8 law, either regulator may seek expedited judicial review
9 of such determination by the United States Court of Ap-
10 peals for the circuit in which the State is located or in
11 the United States Court of Appeals for the District of Co-
12 lumbia Circuit by filing a petition for review in such court.

13 (b) EXPEDITED REVIEW.—The United States Court
14 of Appeals in which a petition for review is filed in accord-
15 ance with subsection (a) shall complete all action on such
16 petition, including rendering a judgment, before the end
17 of the 60-day period beginning on the date on which such
18 petition is filed, unless all parties to such proceedings
19 agree to any extension of such period.

20 (c) SUPREME COURT REVIEW.—Any request for cer-
21 tiorari to the Supreme Court of the United States of any
22 judgment of a United States Court of Appeals with respect
23 to a petition for review under this section shall be filed
24 with the Supreme Court of the United States as soon as
25 practicable after such judgment is issued.

1 (d) STATUTE OF LIMITATION.—No action may be
 2 filed under this section challenging an order, ruling, deter-
 3 mination, or other action of a Federal regulator or State
 4 insurance regulator after the later of—

5 (1) the end of the 12-month period beginning
 6 on the date on which the first public notice is made
 7 of such order, ruling, determination or other action
 8 in its final form; or

9 (2) the end of the 6-month period beginning on
 10 the date on which such order, ruling, determination,
 11 or other action takes effect.

12 (e) STANDARD OF REVIEW.—The court shall decide
 13 an action filed under subsection (a) based on its review
 14 on the merits of all questions presented under State and
 15 Federal law, including the nature of the product or activ-
 16 ity and the history and purpose of its regulation under
 17 State and Federal law, according equal deference to the
 18 Federal regulator and the State insurance regulator.

19 **TITLE III—REGULATORY** 20 **IMPROVEMENTS**

21 **SEC. 301. ELIMINATION OF SAIF AND DIF SPECIAL RE-**
 22 **SERVES.**

23 (a) SAIF SPECIAL RESERVE.—Section 11(a)(6) of
 24 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))
 25 is amended by striking subparagraph (L).

1 (b) DIF SPECIAL RESERVE.—Section 2704 of the
 2 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821
 3 note) is amended—

4 (1) by striking subsection (b); and

5 (2) in subsection (d)—

6 (A) by striking paragraph (4);

7 (B) in paragraph (6)(C)(i), by striking
 8 “(6) and (7)” and inserting “(5), (6), and (7)”;
 9 and

10 (C) in paragraph (6)(C), by striking clause
 11 (ii) and inserting the following:

12 “(ii) by redesignating paragraph (8)
 13 as paragraph (5).”.

14 (c) EFFECTIVE DATE.—This section and the amend-
 15 ments made by this section shall become effective on the
 16 date of enactment of this Act.

17 **SEC. 302. EXPANDED SMALL BANK ACCESS TO S CORPORA-**
 18 **TION TREATMENT.**

19 (a) STUDY.—The Comptroller General of the United
 20 States shall conduct a study of—

21 (1) possible revisions to the rules governing S
 22 corporations, including—

23 (A) increasing the permissible number of
 24 shareholders in such corporations;

1 (B) permitting shares of such corporations
2 to be held in individual retirement accounts;

3 (C) clarifying that interest on investments
4 held for safety, soundness, and liquidity pur-
5 poses should not be considered to be passive in-
6 come;

7 (D) discontinuation of the treatment of
8 stock held by bank directors as a disqualifying
9 personal class of stock for such corporations;
10 and

11 (E) improving Federal tax treatment of
12 bad debt and interest deductions; and

13 (2) what impact such revisions might have on
14 community banks.

15 (b) REPORT TO CONGRESS.—Not later than 6
16 months after the date of enactment of this Act, the Comp-
17 troller General of the United States shall submit a report
18 to the Congress on the results of the study conducted
19 under subsection (a).

20 (c) DEFINITION.—For purposes of this section, the
21 term “S corporation” has the same meaning as in section
22 1361(a)(1) of the Internal Revenue Code of 1986.

23 **SEC. 303. MEANINGFUL CRA EXAMINATIONS.**

24 (a) COMPLIANCE.—Notwithstanding any other provi-
25 sion of law, an insured depository institution rated as

1 “satisfactory” or better in its most recent examination
2 under the Community Reinvestment Act of 1977, and in
3 each such examination during the immediately preceding
4 36-month period shall be deemed to be in compliance with
5 the requirements of that Act until the completion of a sub-
6 sequent regularly scheduled examination under that Act,
7 unless substantial verifiable information arising since the
8 time of its most recent examination under that Act dem-
9 onstrating noncompliance is filed with the appropriate
10 Federal banking agency.

11 (b) OBJECTIONS.—

12 (1) AGENCY DETERMINATION.—The appro-
13 priate Federal banking agency shall determine, on a
14 timely basis, whether the information filed by any
15 person under subsection (a) provides sufficient proof
16 that the subject insured depository institution is no
17 longer in compliance with the requirements of the
18 Community Reinvestment Act of 1977, as provided
19 in subsection (a).

20 (2) BURDEN OF PROOF.—A person filing infor-
21 mation under subsection (a) shall bear the burden of
22 proving to the satisfaction of the appropriate Fed-
23 eral banking agency, the substantial verifiable na-
24 ture of that information.

1 (c) DEFINITIONS.—In this section, the terms “in-
 2 sured depository institution” and “appropriate Federal
 3 banking agency” have the same meanings as in section
 4 3 of the Federal Deposit Insurance Act.

5 **SEC. 304. TEMPORARY EXTENSION OF BANK INSURANCE**
 6 **FUND MEMBER FICO ASSESSMENT RATES.**

7 Section 2703(c)(2)(A) of the Deposit Insurance
 8 Funds Act of 1996 (12 U.S.C. 1441 note) is amended by
 9 striking “1999” and inserting “2002”.

10 **SEC. 305. CROSS MARKETING RESTRICTION; LIMITED PUR-**
 11 **POSE BANK RELIEF; DIVESTITURE.**

12 (a) CROSS MARKETING RESTRICTION.—Section 4(f)
 13 of the Bank Holding Company Act of 1956 (12 U.S.C.
 14 1843(f)) is amended by striking paragraph (3).

15 (b) DAYLIGHT OVERDRAFTS.—Section 4(f) of the
 16 Bank Holding Company Act of 1956 (12 U.S.C. 1843(f))
 17 is amended by inserting after paragraph (2) the following
 18 new paragraph:

19 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
 20 For purposes of paragraph (2)(C), an overdraft is
 21 described in this paragraph if—

22 “(A) such overdraft results from an inad-
 23 vertent computer or accounting error that is be-
 24 yond the control of both the bank and the affil-
 25 iate;

1 “(B) such overdraft—

2 “(i) is permitted or incurred on behalf
3 of an affiliate that is monitored by, reports
4 to, and is recognized as a primary dealer
5 by the Federal Reserve Bank of New York;
6 and

7 “(ii) is fully secured, as required by
8 the Board, by bonds, notes, or other obli-
9 gations that are direct obligations of the
10 United States or on which the principal
11 and interest are fully guaranteed by the
12 United States or by securities and obliga-
13 tions eligible for settlement on the Federal
14 Reserve book entry system; or

15 “(C) such overdraft—

16 “(i) is permitted or incurred by, or on
17 behalf of, an affiliate that is engaged in ac-
18 tivities that are so closely related to bank-
19 ing, or managing or controlling banks, as
20 to be a proper incident thereto; and

21 “(ii) does not cause the bank to vio-
22 late any provision of section 23A or 23B of
23 the Federal Reserve Act, either directly, in
24 the case of a bank that is a member of the
25 Federal Reserve System, or by virtue of

1 section 18(j) of the Federal Deposit Insur-
 2 ance Act, in the case of a bank that is not
 3 a member of the Federal Reserve Sys-
 4 tem.”.

5 (c) INDUSTRIAL LOAN COMPANIES; AFFILIATE
 6 OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding
 7 Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is
 8 amended by inserting before the period at the end “, or
 9 that is otherwise permissible for a bank controlled by a
 10 company described in section 4(f)(1)”.

11 (d) ACTIVITIES LIMITATIONS.—Section 4(f)(2) of the
 12 Bank Holding Company Act of 1956 (12 U.S.C.
 13 1843(f)(2)) is amended—

14 (1) by striking “Paragraph (1) shall cease to
 15 apply to any company described in such paragraph
 16 if—” and inserting “Subject to paragraph (3), a
 17 company described in paragraph (1) shall no longer
 18 qualify for the exemption provided under that para-
 19 graph if—”;

20 (2) in subparagraph (A)—

21 (A) in clause (ii)(IX), by striking “and” at
 22 the end;

23 (B) in clause (ii)(X), by inserting “and”
 24 after the semicolon;

1 (C) in clause (ii), by inserting after sub-
2 clause (X) the following:

3 “(XI) assets that are derived
4 from, or incidental to, activities in
5 which institutions described in section
6 2(c)(2)(F) or section 2(c)(2)(H) are
7 permitted to engage;” and

8 (D) by striking “or” at the end; and
9 (3) by striking subparagraph (B) and inserting
10 the following:

11 “(B) any bank subsidiary of such
12 company—

13 “(i) accepts demand deposits or de-
14 posits that the depositor may withdraw by
15 check or similar means for payment to
16 third parties; and

17 “(ii) engages in the business of mak-
18 ing commercial loans (except that, for pur-
19 poses of this clause, loans made in the or-
20 dinary course of a credit card operation
21 shall not be treated as commercial loans);
22 or

23 “(C) after the date of enactment of the
24 Competitive Equality Amendments of 1987, any
25 bank subsidiary of such company permits any

1 overdraft (including any intraday overdraft), or
 2 incurs any such overdraft in the account of the
 3 bank at a Federal reserve bank, on behalf of an
 4 affiliate, other than an overdraft described in
 5 paragraph (3).”.

6 (e) DIVESTITURE REQUIREMENT.—Section 4(f)(4) of
 7 the Bank Holding Company Act of 1956 (12 U.S.C.
 8 1843(f)(4)) is amended to read as follows:

9 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
 10 EMPTION.—If any company described in paragraph
 11 (1) fails to qualify for the exemption provided under
 12 paragraph (1) by operation of paragraph (2), such
 13 exemption shall cease to apply to such company and
 14 such company shall divest control of each bank it
 15 controls before the end of the 180-day period begin-
 16 ning on the date on which the company receives no-
 17 tice from the Board that the company has failed to
 18 continue to qualify for such exemption, unless, be-
 19 fore the end of such 180-day period, the company
 20 has—

21 “(A) either—

22 “(i) corrected the condition or ceased
 23 the activity that caused the company to
 24 fail to continue to qualify for the exemp-
 25 tion; or

1 “(ii) submitted a plan to the Board
 2 for approval to cease the activity or correct
 3 the condition in a timely manner (which
 4 shall not exceed 1 year); and

5 “(B) implemented procedures that are rea-
 6 sonably adapted to avoid the reoccurrence of
 7 such condition or activity.”.

8 **SEC. 306. “PLAIN LANGUAGE” REQUIREMENT FOR FEDERAL**
 9 **BANKING AGENCY RULES.**

10 (a) IN GENERAL.—Each Federal banking agency
 11 shall use plain language in all proposed and final
 12 rulemakings published by the agency in the Federal Reg-
 13 ister after January 1, 2000.

14 (b) REPORT.—Not later than March 1, 2001, each
 15 Federal banking agency shall submit to the Congress a
 16 report that describes how the agency has complied with
 17 subsection (a).

18 (c) DEFINITIONS.—For purposes of this section, the
 19 terms “Federal banking agency” and “State bank super-
 20 visor” have the same meanings as in section 3 of the Fed-
 21 eral Deposit Insurance Act.

22 **SEC. 307. RETENTION OF “FEDERAL” IN NAME OF CON-**
 23 **VERTED FEDERAL SAVINGS ASSOCIATION.**

24 Section 2 of the Act entitled “An Act to enable na-
 25 tional banking associations to increase their capital stock

1 and to change their names or locations”, approved May
 2 1, 1886 (12 U.S.C. 30), is amended by adding at the end
 3 the following new subsection:

4 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
 5 VERTED FEDERAL SAVINGS ASSOCIATION.—

6 “(1) IN GENERAL.—Notwithstanding subsection
 7 (a) or any other provision of law, any depository in-
 8 stitution, the charter of which is converted from that
 9 of a Federal savings association to a national bank
 10 or a State bank after the date of enactment of the
 11 Financial Services Modernization Act of 1999 may
 12 retain the term ‘Federal’ in the name of such insti-
 13 tution if such institution remains an insured deposi-
 14 tory institution.

15 “(2) DEFINITIONS.—For purposes of this sub-
 16 section, the terms ‘depository institution’, ‘insured
 17 depository institution’, ‘national bank’, and ‘State
 18 bank’ have the same meanings as in section 3 of the
 19 Federal Deposit Insurance Act.”.

20 **SEC. 308. COMMUNITY REINVESTMENT ACT EXEMPTION.**

21 (a) IN GENERAL.—No community financial institu-
 22 tion shall be subject to the Community Reinvestment Act
 23 of 1977 (12 U.S.C. 2901 et seq.).

24 (b) DEFINITION OF COMMUNITY FINANCIAL INSTI-
 25 TUTION.—As used in this section, the term “community

1 financial institution” means an insured depository institu-
 2 tion (as defined in section 3 of the Federal Deposit Insur-
 3 ance Act), that has aggregate assets of not more than
 4 \$100,000,000, and that is located in a non-metropolitan
 5 area.

6 (c) ADJUSTMENTS.—The dollar amount referred to
 7 in subsection (b) shall be adjusted annually after Decem-
 8 ber 31, 1999, by the annual percentage increase in the
 9 Consumer Price Index for Urban Wage Earners and Cler-
 10 ical Workers published by the Bureau of Labor Statistics.

11 (d) DEFINITION.—For purposes of this section, the
 12 term “non-metropolitan area” means any area, no part
 13 of which is within an area designated as a metropolitan
 14 statistical area by the Office of Management and Budget.

15 **SEC. 309. BANK OFFICERS AND DIRECTORS AS OFFICERS**
 16 **AND DIRECTORS OF PUBLIC UTILITIES.**

17 Section 305(b) of the Federal Power Act (16 U.S.C.
 18 825d(b)) is amended—

19 (1) by striking “(b) After six” and inserting the
 20 following:

21 “(b) INTERLOCKING DIRECTORATES.—

22 “(1) IN GENERAL.—After 6”; and

23 (2) by adding at the end the following:

24 “(2) APPLICABILITY.—

1 “(A) IN GENERAL.—In the circumstances
2 described in subparagraph (B), paragraph (1)
3 shall not apply to a person that holds or pro-
4 poses to hold the positions of—

5 “(i) officer or director of a public util-
6 ity; and

7 “(ii) officer or director of a bank,
8 trust company, banking association, or
9 firm authorized by law to underwrite or
10 participate in the marketing of securities
11 of a public utility.

12 “(B) CIRCUMSTANCES.—The cir-
13 cumstances described in this subparagraph are
14 that—

15 “(i) a person described in subpara-
16 graph (A) does not participate in any de-
17 liberations or decisions of the public utility
18 regarding the selection of a bank, trust
19 company, banking association, or firm to
20 underwrite or participate in the marketing
21 of securities of the public utility, if the per-
22 son serves as an officer or director of a
23 bank, trust company, banking association,
24 or firm that is under consideration in the
25 deliberation process;

1 “(ii) the bank, trust company, bank-
 2 ing association, or firm of which the per-
 3 son is an officer or director does not en-
 4 gage in the underwriting of, or participate
 5 in the marketing of, securities of the public
 6 utility of which the person holds the posi-
 7 tion of officer or director;

8 “(iii) the public utility for which the
 9 person serves or proposes to serve as an
 10 officer or director selects underwriters by
 11 competitive procedures; or

12 “(iv) the issuance of securities the
 13 public utility for which the person serves
 14 or proposes to serve as an officer or direc-
 15 tor has been approved by all Federal and
 16 State regulatory agencies having jurisdic-
 17 tion over the issuance.”.

18 **SEC. 310. CONTROL OF BANKERS BANKS.**

19 Section 2(a)(5)(E)(i) of the Bank Holding Company
 20 Act of 1956 (12 U.S.C. 1841(a)(5)(E)(i)) is amended by
 21 inserting “one or more” before “thrift institutions”.

22 **SEC. 311. MULTISTATE LICENSING AND INTERSTATE IN-**
 23 **SURANCE SALES ACTIVITIES.**

24 (a) FINDINGS.—Congress finds that—

1 (1) the States regulate the business of insur-
2 ance, including the licensing of insurance agents and
3 brokers;

4 (2) the current State insurance licensing system
5 requires insurance agents and brokers to obtain li-
6 censes on a line-by-line, class-by-class, producer-by-
7 producer, State-by-State basis;

8 (3) in the commercial and industrial insurance
9 arena, this State-based system usually requires a
10 single agent or broker to hold scores of licenses if
11 that agent or broker intends to sell or broker insur-
12 ance on a nationwide basis;

13 (4) because of the duplicative licensing require-
14 ments both within States and from State to State,
15 a single insurance agent or broker must satisfy lit-
16 erally hundreds of administrative filing requirements
17 to become fully licensed to engage in the sale of a
18 full range of insurance products on a nationwide
19 basis;

20 (5) these administrative requirements appear to
21 be essentially unrelated to any requisite standards of
22 professionalism;

23 (6) many States impose certain requirements
24 on insurance agents and brokers that pose an undue,
25 discriminatory burden on nonresident agents, includ-

1 ing some States that ban solicitation of insurance
2 clients by nonresident agents and brokers;

3 (7) many States impose anticompetitive post-li-
4 censure requirements on nonresident agents and bro-
5 kers, including countersignature laws that require an
6 agent or broker servicing the needs of an out-of-
7 State client to have any insurance policy that is sold
8 “countersigned” by a resident agent;

9 (8) in some cases, such countersignature laws
10 also require a nonresident agent or broker to pay at
11 least half of any commission earned in a State in
12 which the agent or broker is not a resident to a resi-
13 dent agent or broker; and

14 (9) such duplicative and onerous filing require-
15 ments and anticompetitive burdens inhibit interstate
16 commerce, constitute unjustifiable trade barriers,
17 greatly undermine the competition that this Act
18 seeks to foster.

19 (b) SENSE OF CONGRESS.—It is the sense of the
20 Congress that—

21 (1) by the end of the 36-month period begin-
22 ning on the date of enactment of this Act, the States
23 should—

24 (A) implement uniform insurance agent
25 and broker licensing application and qualifica-

1 tion requirements that result in a fully recip-
2 rocal licensing system; and

3 (B) eliminate any pre- or post-licensure re-
4 quirements that have the practical effect of dis-
5 criminating, directly or indirectly, against non-
6 resident insurance agents or brokers;

7 (2) if such actions are not taken, Congress
8 should take steps to directly rectify the problems
9 identified in subsection (a); and

10 (3) any entity established by the Congress to so
11 rectify the problems should be under the supervision
12 and oversight of the National Association of Insur-
13 ance Commissioners.

14 **TITLE IV—FEDERAL HOME LOAN** 15 **BANK SYSTEM MODERNIZATION**

16 **SEC. 401. SHORT TITLE.**

17 This title may be cited as the “Federal Home Loan
18 Bank System Modernization Act of 1999”.

19 **SEC. 402. DEFINITIONS.**

20 Section 2 of the Federal Home Loan Bank Act (12
21 U.S.C. 1422) is amended—

22 (1) in paragraph (1), by striking “term ‘Board’
23 means” and inserting “terms ‘Finance Board’ and
24 ‘Board’ mean”;

1 (2) by striking paragraph (3) and inserting the
2 following:

3 “(3) STATE.—The term ‘State’, in addition to
4 the States of the United States, includes the District
5 of Columbia, Guam, Puerto Rico, the United States
6 Virgin Islands, American Samoa, and the Common-
7 wealth of the Northern Mariana Islands.”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(13) COMMUNITY FINANCIAL INSTITUTION.—

11 “(A) IN GENERAL.—The term ‘community
12 financial institution’ means a member—

13 “(i) the deposits of which are insured
14 under the Federal Deposit Insurance Act;
15 and

16 “(ii) that has, as of the date of the
17 transaction at issue, less than
18 \$500,000,000 in average total assets,
19 based on an average of total assets over
20 the 3 years preceding that date.

21 “(B) ADJUSTMENTS.—The \$500,000,000
22 limit referred to in subparagraph (A)(ii) shall
23 be adjusted annually by the Finance Board,
24 based on the annual percentage increase, if any,
25 in the Consumer Price Index for all urban con-

1 sumers, as published by the Department of
2 Labor.”.

3 **SEC. 403. SAVINGS ASSOCIATION MEMBERSHIP.**

4 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
5 Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.
6 1464(f)) is amended to read as follows:

7 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
8 On and after June 1, 2000, a Federal savings association
9 may become a member of the Federal Home Loan Bank
10 System, and shall qualify for such membership in the
11 manner provided by the Federal Home Loan Bank Act.”.

12 (b) WITHDRAWAL.—Section 6(e) of the Federal
13 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
14 by striking “Any member other than a Federal savings
15 and loan association may withdraw” and inserting “Any
16 member may withdraw if, on the date of withdrawal there
17 is in effect a certification by the Finance Board that the
18 withdrawal will not cause the Federal Home Loan Bank
19 System to fail to meet its obligation under section
20 21B(f)(2)(C) to contribute to the debt service for the obli-
21 gations issued by the Resolution Funding Corporation”.

22 **SEC. 404. ADVANCES TO MEMBERS; COLLATERAL.**

23 (a) IN GENERAL.—Section 10(a) of the Federal
24 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

1 (1) by redesignating paragraphs (1) through
 2 (4) as subparagraphs (A) through (D), respectively,
 3 and indenting appropriately;

4 (2) by striking “(a) Each” and inserting the
 5 following:

6 “(a) IN GENERAL.—

7 “(1) ALL ADVANCES.—Each”;

8 (3) by striking the second sentence and insert-
 9 ing the following:

10 “(2) PURPOSES OF ADVANCES.—A long-term
 11 advance may only be made for the purposes of—

12 “(A) providing funds to any member for
 13 residential housing finance; and

14 “(B) providing funds to any community fi-
 15 nancial institution for small businesses, small
 16 farms, and small agri-businesses.”;

17 (4) by striking “A Bank” and inserting the fol-
 18 lowing:

19 “(3) COLLATERAL.—A Bank”;

20 (5) in paragraph (3) (as so designated by para-
 21 graph (4) of this subsection)—

22 (A) in subparagraph (C) (as so redesign-
 23 ated by paragraph (1) of this subsection) by
 24 striking “Deposits” and inserting “Cash or de-
 25 posits”;

1 (B) in subparagraph (D) (as so redesign-
 2 nated by paragraph (1) of this subsection), by
 3 striking the second sentence; and

4 (C) by inserting after subparagraph (D)
 5 (as so redesignated by paragraph (1) of this
 6 subsection) the following new subparagraph:

7 “(E) Secured loans for small business, ag-
 8 riculture, or securities representing a whole in-
 9 terest in such secured loans, in the case of any
 10 community financial institution.”;

11 (6) in paragraph (5)—

12 (A) in the second sentence, by striking
 13 “and the Board”;

14 (B) in the third sentence, by striking
 15 “Board” and inserting “Federal Home Loan
 16 Bank”; and

17 (C) by striking “(5) Paragraphs (1)
 18 through (4)” and inserting the following:

19 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
 20 graphs (A) through (E) of paragraph (3)”;

21 (7) by adding at the end the following:

22 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
 23 ARDS.—The Board may review the collateral stand-
 24 ards applicable to each Federal Home Loan Bank
 25 for the classes of collateral described in subpara-

1 graphs (D) and (E) of paragraph (3), and may, if
 2 necessary for safety and soundness purposes, require
 3 an increase in the collateral standards for any or all
 4 of those classes of collateral.

5 “(6) DEFINITIONS.—For purposes of this sub-
 6 section, the terms ‘small business’, ‘agriculture’,
 7 ‘small farm’, and ‘small agri-business’ shall have the
 8 meanings given those terms by rule or regulation of
 9 the Finance Board.”.

10 (b) CLERICAL AMENDMENT.—The section heading
 11 for section 10 of the Federal Home Loan Bank Act (12
 12 U.S.C. 1430) is amended to read as follows:

13 **“SEC. 10. ADVANCES TO MEMBERS.”.**

14 **SEC. 405. ELIGIBILITY CRITERIA.**

15 Section 4(a) of the Federal Home Loan Bank Act
 16 (12 U.S.C. 1424(a)) is amended—

17 (1) in paragraph (2)(A), by inserting, “(other
 18 than a community financial institution)” after “in-
 19 stitution”;

20 (2) in the matter immediately following para-
 21 graph (2)(C)—

22 (A) by striking “An insured” and inserting
 23 the following:

24 “(3) CERTAIN INSTITUTIONS.—An insured”;

25 and

1 (B) by striking “preceding sentence” and
 2 inserting “paragraph (2)”; and

3 (3) by adding at the end the following new
 4 paragraph:

5 “(4) LIMITED EXEMPTION FOR COMMUNITY FI-
 6 NANCIAL INSTITUTIONS.—A community financial in-
 7 stitution that otherwise meets the requirements of
 8 paragraph (2) may become a member without regard
 9 to the percentage of its total assets that is rep-
 10 resented by residential mortgage loans, as described
 11 in subparagraph (A) of paragraph (2).”.

12 **SEC. 406. MANAGEMENT OF BANKS.**

13 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
 14 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
 15 amended—

16 (1) by striking “(d) The term” and inserting
 17 the following:

18 “(d) TERMS OF OFFICE.—The term”; and

19 (2) by striking “shall be two years”.

20 (b) COMPENSATION.—Section 7(i) of the Federal
 21 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by
 22 striking “subject to the approval of the board”.

23 (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-
 24 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is

1 amended by striking sections 22A (12 U.S.C. 1442a) and
2 27 (12 U.S.C. 1447).

3 (d) SECTION 12.—Section 12 of the Federal Home
4 Loan Bank Act (12 U.S.C. 1432) is amended—

5 (1) in subsection (a)—

6 (A) by striking “, but, except” and all that
7 follows through “ten years”;

8 (B) by striking “subject to the approval of
9 the Board” each place that term appears;

10 (C) by striking “and, by its Board of direc-
11 tors,” and all that follows through “agent of
12 such bank,” and inserting “and, by the board
13 of directors of the Bank, to prescribe, amend,
14 and repeal by-laws governing the manner in
15 which its affairs may be administered, con-
16 sistent with applicable laws and regulations, as
17 administered by the Finance Board. No officer,
18 employee, attorney, or agent of a Federal Home
19 Loan Bank”; and

20 (D) by striking “Board of directors” each
21 place that term appears and inserting “board of
22 directors”; and

23 (2) in subsection (b), by striking “loans banks”
24 and inserting “loan banks”.

1 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
2 NANCE BOARD.—

3 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

4 Section 2B(a) of the Federal Home Loan Bank Act
5 (12 U.S.C. 1422b(a)) is amended by adding at the
6 end the following new paragraphs:

7 “(5) To issue and serve a notice of charges
8 upon a Federal Home Loan Bank or upon any exec-
9 utive officer or director of a Federal Home Loan
10 Bank if, in the determination of the Finance Board,
11 the Bank, executive officer, or director is engaging
12 or has engaged in, or the Finance Board has reason-
13 able cause to believe that the Bank, executive officer,
14 or director is about to engage in, any conduct that
15 violates any provision of this Act or any law, order,
16 rule, or regulation or any condition imposed in writ-
17 ing by the Finance Board in connection with the
18 granting of any application or other request by the
19 Bank, or any written agreement entered into by the
20 Bank with the agency, in accordance with the proce-
21 dures provided in section 1371(c) of the Federal
22 Housing Enterprises Financial Safety and Sound-
23 ness Act of 1992. Such authority includes the same
24 authority to take affirmative action to correct condi-
25 tions resulting from violations or practices or to

1 limit activities of a Bank or any executive officer or
 2 director of a Bank as appropriate Federal banking
 3 agencies have to take with respect to insured deposi-
 4 tory institutions under paragraphs (6) and (7) of
 5 section 8(b) of the Federal Deposit Insurance Act,
 6 and to have all other powers, rights, and duties to
 7 enforce this Act with respect to the Federal Home
 8 Loan Banks and their executive officers and direc-
 9 tors as the Office of Federal Housing Enterprise
 10 Oversight has to enforce the Federal Housing Enter-
 11 prises Financial Safety and Soundness Act of 1992,
 12 the Federal National Mortgage Association Charter
 13 Act, or the Federal Home Loan Mortgage Corpora-
 14 tion Act with respect to the Federal housing enter-
 15 prises under the Federal Housing Enterprises Fi-
 16 nancial Safety and Soundness Act of 1992.

17 “(6) To sue and be sued, by and through its
 18 own attorneys.”.

19 (2) TECHNICAL AMENDMENT.—Section 111 of
 20 Public Law 93–495 (12 U.S.C. 250) is amended by
 21 inserting “Federal Housing Finance Board,” after
 22 “Director of the Office of Thrift Supervision,”.

23 (f) ELIGIBILITY TO SECURE ADVANCES.—

1 (1) SECTION 9.—Section 9 of the Federal
2 Home Loan Bank Act (12 U.S.C. 1429) is
3 amended—

4 (A) in the second sentence, by striking
5 “with the approval of the Board”; and

6 (B) in the third sentence, by striking “,
7 subject to the approval of the Board,”.

8 (2) SECTION 10.—Section 10 of the Federal
9 Home Loan Bank Act (12 U.S.C. 1430) is
10 amended—

11 (A) in subsection (c)—

12 (i) in the first sentence, by striking
13 “Board” and inserting “Federal Home
14 Loan Bank”; and

15 (ii) in the second sentence, by striking
16 “held by” and all that follows before the
17 period; and

18 (B) in subsection (d)—

19 (i) in the first sentence, by striking
20 “and the approval of the Board”; and

21 (ii) by striking “Subject to the ap-
22 proval of the Board, any” and inserting
23 “Any”.

24 (g) SECTION 16.—Section 16(a) of the Federal Home
25 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

1 (1) in the third sentence—

2 (A) by striking “net earnings” and insert-
 3 ing “previously retained earnings or current net
 4 earnings”; and

5 (B) by striking “, and then only with the
 6 approval of the Federal Housing Finance
 7 Board”; and

8 (2) by striking the fourth sentence.

9 (h) SECTION 18.—Section 18(b) of the Federal Home
 10 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
 11 ing paragraph (4).

12 **SEC. 407. RESOLUTION FUNDING CORPORATION.**

13 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-
 14 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is
 15 amended to read as follows:

16 “(C) PAYMENTS BY FEDERAL HOME LOAN
 17 BANKS.—

18 “(i) IN GENERAL.—To the extent that
 19 the amounts available pursuant to sub-
 20 paragraphs (A) and (B) are insufficient to
 21 cover the amount of interest payments,
 22 each Federal Home Loan Bank shall pay
 23 to the Funding Corporation in each cal-
 24 endar year, 20.75 percent of the net earn-
 25 ings of that Bank (after deducting ex-

1 penses relating to section 10(j) and oper-
2 ating expenses).

3 “(ii) ANNUAL DETERMINATION.—The
4 Board annually shall determine the extent
5 to which the value of the aggregate
6 amounts paid by the Federal Home Loan
7 Banks exceeds or falls short of the value of
8 an annuity of \$300,000,000 per year that
9 commences on the issuance date and ends
10 on the final scheduled maturity date of the
11 obligations, and shall select appropriate
12 present value factors for making such de-
13 terminations.

14 “(iii) PAYMENT TERM ALTER-
15 ATIONS.—The Board shall extend or short-
16 en the term of the payment obligations of
17 a Federal Home Loan Bank under this
18 subparagraph as necessary to ensure that
19 the value of all payments made by the
20 Banks is equivalent to the value of an an-
21 nuity referred to in clause (ii).

22 “(iv) TERM BEYOND MATURITY.—If
23 the Board extends the term of payment ob-
24 ligations beyond the final scheduled matu-
25 rity date for the obligations, each Federal

1 Home Loan Bank shall continue to pay
2 20.75 percent of its net earnings (after de-
3 ducting expenses relating to section 10(j)
4 and operating expenses) to the Treasury of
5 the United States until the value of all
6 such payments by the Federal Home Loan
7 Banks is equivalent to the value of an an-
8 nuity referred to in clause (ii). In the final
9 year in which the Federal Home Loan
10 Banks are required to make any payment
11 to the Treasury under this subparagraph,
12 if the dollar amount represented by 20.75
13 percent of the net earnings of the Federal
14 Home Loan Banks exceeds the remaining
15 obligation of the Banks to the Treasury,
16 the Finance Board shall reduce the per-
17 centage pro rata to a level sufficient to pay
18 the remaining obligation.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall become effective on June 1, 2000.
21 Payments made by a Federal Home Loan Bank before
22 that effective date shall be counted toward the total obliga-
23 tion of that Bank under section 21B(f)(2)(C) of the Fed-
24 eral Home Loan Bank Act, as amended by this section.

1 **SEC. 408. GAO STUDY ON FEDERAL HOME LOAN BANK SYS-**
2 **TEM CAPITAL.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study of—

5 (1) possible revisions to the capital structure of
6 the Federal Home Loan Bank System, including the
7 need for—

8 (A) more permanent capital;

9 (B) a statutory leverage ratio; and

10 (C) a risk-based capital structure; and

11 (2) what impact such revisions might have on
12 the operations of the Federal Home Loan Bank Sys-
13 tem, including the obligation of the Federal Home
14 Loan Bank System under section 21B(f)(2)(C) of
15 the Federal Home Loan Bank Act.

16 (b) REPORT TO CONGRESS.—Not later than 1 year
17 after the date of enactment of this Act, the Comptroller
18 General of the United States shall submit a report to the
19 Congress on the results of the study conducted under sub-
20 section (a).

21 **TITLE V—FUNCTIONAL REGULA-**
22 **TION OF BROKERS AND DEAL-**
23 **ERS**

24 **SEC. 501. DEFINITION OF BROKER.**

25 Section 3(a)(4) of the Securities Exchange Act of
26 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

1 “(4) BROKER.—

2 “(A) IN GENERAL.—The term ‘broker’
3 means any person engaged in the business of
4 effecting transactions in securities for the ac-
5 count of others.

6 “(B) EXCEPTION FOR CERTAIN BANK AC-
7 TIVITIES.—A bank shall not be considered to be
8 a broker because the bank engages in any of
9 the following activities under the conditions de-
10 scribed:

11 “(i) THIRD PARTY BROKERAGE AR-
12 RANGEMENTS.—The bank enters into a
13 contractual or other arrangement with a
14 broker or dealer registered under this title
15 under which the broker or dealer offers
16 brokerage services on or off the premises
17 of the bank, if—

18 “(I) such broker or dealer is
19 clearly identified as the person per-
20 forming the brokerage services;

21 “(II) the broker or dealer per-
22 forms brokerage services in an area of
23 the bank that is clearly marked and,
24 to the extent practicable, physically

1 separate from the routine deposit-tak-
2 ing activities of the bank;

3 “(III) any materials used by the
4 bank to advertise or promote generally
5 the availability of brokerage services
6 under the contractual or other ar-
7 rangement clearly indicate that the
8 brokerage services are being provided
9 by the broker or dealer and not by the
10 bank;

11 “(IV) any materials used by the
12 bank to advertise or promote generally
13 the availability of brokerage services
14 under the contractual or other ar-
15 rangement are in compliance with the
16 Federal securities laws before dis-
17 tribution;

18 “(V) bank employees (other than
19 associated persons of a broker or deal-
20 er who are qualified pursuant to the
21 rules of a self-regulatory organization)
22 perform only clerical or ministerial
23 functions in connection with broker-
24 age transactions including scheduling
25 appointments with the associated per-

1 sons of a broker or dealer, except that
2 bank employees may forward cus-
3 tomer funds or securities and may de-
4 scribe in general terms the range of
5 investment vehicles available from the
6 bank and the broker or dealer under
7 the contractual or other arrangement;

8 “(VI) bank employees do not di-
9 rectly receive incentive compensation
10 for any brokerage transaction, unless
11 such employees are associated persons
12 of a broker or dealer and are qualified
13 pursuant to the rules of a self-regu-
14 latory organization, except that the
15 bank employees may receive com-
16 pensation for the referral of any cus-
17 tomer if the compensation is a nomi-
18 nal one-time cash fee of a fixed dollar
19 amount and the payment of the fee is
20 not contingent on whether the referral
21 results in a transaction;

22 “(VII) such services are provided
23 by the broker or dealer on a basis in
24 which all customers that receive any

1 services are fully disclosed to the
2 broker or dealer;

3 “(VIII) the bank does not carry
4 a securities account of the customer,
5 except in a customary custodian or
6 trustee capacity; and

7 “(IX) the bank, broker, or dealer
8 informs each customer that the bro-
9 kerage services are provided by the
10 broker or dealer and not by the bank,
11 and that the securities are not depos-
12 its or other obligations of the bank,
13 are not guaranteed by the bank, and
14 are not insured by the Federal De-
15 posit Insurance Corporation.

16 “(ii) TRUST ACTIVITIES.—The bank
17 effects transactions in a trustee capacity,
18 or effects transactions in a fiduciary capac-
19 ity in its trust department or other depart-
20 ment that is regularly examined by bank
21 examiners for compliance with fiduciary
22 principles and standards, and does not
23 publicly solicit brokerage business, other
24 than by advertising that it effects trans-

1 actions in securities in conjunction with
2 advertising its other trust activities.

3 “(iii) PERMISSIBLE SECURITIES
4 TRANSACTIONS.—The bank effects trans-
5 actions in—

6 “(I) commercial paper, bankers
7 acceptances, or commercial bills;

8 “(II) exempted securities;

9 “(III) qualified Canadian Gov-
10 ernment obligations, as defined in sec-
11 tion 5136 of the Revised Statutes of
12 the United States, in conformity with
13 section 15C of this title and the rules
14 and regulations thereunder, or obliga-
15 tions of the North American Develop-
16 ment Bank; or

17 “(IV) any standardized, credit
18 enhanced debt security issued by a
19 foreign government pursuant to the
20 March 1989 plan of then Secretary of
21 the Treasury Brady, used by such for-
22 eign government to retire outstanding
23 commercial bank loans.

24 “(iv) CERTAIN STOCK PURCHASE
25 PLANS.—

1 “(I) EMPLOYEE BENEFIT
2 PLANS.—The bank effects trans-
3 actions, as part of its transfer agency
4 activities, in the securities of an issuer
5 as part of any pension, retirement,
6 profit-sharing, bonus, thrift, savings,
7 incentive, or other similar benefit plan
8 for the employees of that issuer or its
9 subsidiaries, if the bank does not so-
10 licit transactions or provide invest-
11 ment advice with respect to the pur-
12 chase or sale of securities in connec-
13 tion with the plan.

14 “(II) DIVIDEND REINVESTMENT
15 PLANS.—The bank effects trans-
16 actions, as part of its transfer agency
17 activities, in the securities of an issuer
18 as part of that issuer’s dividend rein-
19 vestment plan, if—

20 “(aa) the bank does not so-
21 licit transactions or provide in-
22 vestment advice with respect to
23 the purchase or sale of securities
24 in connection with the plan; and

1 “(bb) the bank does not net
2 shareholders’ buy and sell orders,
3 other than for programs for odd-
4 lot holders or plans registered
5 with the Commission.

6 “(III) ISSUER PLANS.—The bank
7 effects transactions, as part of its
8 transfer agency activities, in the secu-
9 rities of an issuer as part of a plan or
10 program for the purchase or sale of
11 that issuer’s shares, if—

12 “(aa) the bank does not so-
13 licit transactions or provide in-
14 vestment advice with respect to
15 the purchase or sale of securities
16 in connection with the plan or
17 program; and

18 “(bb) the bank does not net
19 shareholders’ buy and sell orders,
20 other than for programs for odd-
21 lot holders or plans registered
22 with the Commission.

23 “(IV) PERMISSIBLE DELIVERY
24 OF MATERIALS.—The exception to
25 being considered a broker for a bank

1 engaged in activities described in sub-
2 clauses (I), (II), and (III) will not be
3 affected by delivery of written or elec-
4 tronic plan materials by a bank to em-
5 ployees of the issuer, shareholders of
6 the issuer, or members of affinity
7 groups of the issuer, so long as such
8 materials are—

9 “(aa) comparable in scope or
10 nature to that permitted by the
11 Commission as of the date of the
12 enactment of the Financial Serv-
13 ices Modernization Act of 1999;
14 or

15 “(bb) otherwise permitted by
16 the Commission.

17 “(v) SWEEP ACCOUNTS.—The bank
18 effects transactions as part of a program
19 for the investment or reinvestment of bank
20 deposit funds into any no-load, open-end
21 management investment company reg-
22 istered under the Investment Company Act
23 of 1940 that holds itself out as a money
24 market fund.

1 “(vi) AFFILIATE TRANSACTIONS.—

2 The bank effects transactions for the ac-
 3 count of any affiliate of the bank (as de-
 4 fined in section 2 of the Bank Holding
 5 Company Act of 1956) other than—

6 “(I) a registered broker or deal-
 7 er; or

8 “(II) an affiliate that is engaged
 9 in merchant banking, as described in
 10 section 4(k)(4)(H) of the Bank Hold-
 11 ing Company Act of 1956.

12 “(vii) PRIVATE SECURITIES OFFER-
 13 INGS.—The bank effects sales as part of a
 14 primary offering of securities not involving
 15 a public offering, pursuant to section 3(b),
 16 4(2), or 4(6) of the Securities Act of 1933,
 17 or the rules and regulations issued there-
 18 under.

19 “(viii) SAFEKEEPING AND CUSTODY
 20 ACTIVITIES.—

21 “(I) IN GENERAL.—The bank, as
 22 part of customary banking activities—

23 “(aa) provides safekeeping
 24 or custody services with respect
 25 to securities, including the exer-

1 cise of warrants and other rights
2 on behalf of customers;

3 “(bb) facilitates the transfer
4 of funds or securities, as a custo-
5 dian or a clearing agency, in con-
6 nection with the clearance and
7 settlement of its customers’
8 transactions in securities;

9 “(cc) effects securities lend-
10 ing or borrowing transactions
11 with or on behalf of customers as
12 part of services provided to cus-
13 tomers pursuant to division (aa)
14 or (bb) or invests cash collateral
15 pledged in connection with such
16 transactions; or

17 “(dd) holds securities
18 pledged by a customer to another
19 person or securities subject to
20 purchase or resale agreements in-
21 volving a customer, or facilitates
22 the pledging or transfer of such
23 securities by book entry or as
24 otherwise provided under applica-
25 ble law.

1 “(II) EXCEPTION FOR CARRYING
2 BROKER ACTIVITIES.—The exception
3 to being considered a broker for a
4 bank engaged in activities described in
5 subclause (I) shall not apply if the
6 bank, in connection with such activi-
7 ties, acts in the United States as a
8 carrying broker (as such term, and
9 different formulations thereof, are
10 used in section 15(c)(3) and the rules
11 and regulations thereunder) for any
12 broker or dealer, unless such carrying
13 broker activities are engaged in with
14 respect to government securities (as
15 defined in paragraph (42) of this sub-
16 section).

17 “(ix) BANKING PRODUCTS.—The bank
18 effects transactions in traditional banking
19 products, as defined in section 503(a) of
20 the Financial Services Modernization Act
21 of 1999.

22 “(x) DE MINIMIS EXCEPTION.—The
23 bank effects, other than in transactions re-
24 ferred to in clauses (i) through (ix), not
25 more than 500 transactions in securities in

1 any calendar year, and such transactions
2 are not effected by an employee of the
3 bank who is also an employee of a broker
4 or dealer.

5 “(C) EXECUTION BY BROKER OR DEAL-
6 ER.—The exception to being considered a
7 broker for a bank engaged in activities de-
8 scribed in clauses (ii), (iv), and (viii) of sub-
9 paragraph (B) shall not apply if the activities
10 described in such provisions result in the trade
11 in the United States of any security that is a
12 publicly traded security in the United States,
13 unless—

14 “(i) the bank directs such trade to a
15 registered broker or dealer for execution;

16 “(ii) the trade is a cross trade or
17 other substantially similar trade of a secu-
18 rity that—

19 “(I) is made by the bank or be-
20 tween the bank and an affiliated fidu-
21 ciary; and

22 “(II) is not in contravention of
23 fiduciary principles established under
24 applicable Federal or State law; or

1 “(iii) the trade is conducted in some
2 other manner permitted under such rules,
3 regulations, or orders as the Commission
4 may prescribe or issue.

5 “(D) NO EFFECT OF BANK EXEMPTIONS
6 ON OTHER COMMISSION AUTHORITY.—The ex-
7 ception to being considered a broker for a bank
8 engaged in activities described in subpara-
9 graphs (B) and (C) shall not affect the author-
10 ity of the Commission under any other provi-
11 sion of this title or any other securities law.

12 “(E) FIDUCIARY CAPACITY.—For purposes
13 of subparagraph (B)(ii) of this paragraph and
14 paragraph (5)(C), the term ‘fiduciary capacity’
15 means—

16 “(i) in the capacity as trustee, execu-
17 tor, administrator, registrar of stocks and
18 bonds, transfer agent, guardian, assignee,
19 receiver, or custodian, either under a uni-
20 form gift to minor act or for an individual
21 retirement account, or as an investment
22 adviser if the bank receives a fee for its in-
23 vestment advice or services, or as a service
24 provider to any pension, retirement, profit

1 sharing, bonus, thrift, savings, incentive,
 2 or other similar benefit plan;

3 “(ii) in any capacity in which the
 4 bank possesses investment discretion on
 5 behalf of another; or

6 “(iii) in any other similar capacity.

7 “(F) EXCEPTION FOR ENTITIES SUBJECT
 8 TO SECTION 15(e).—The term ‘broker’ does not
 9 include a bank that—

10 “(i) was, on the day before the date of
 11 enactment of the Financial Services Mod-
 12 ernization Act of 1999, subject to section
 13 15(e); and

14 “(ii) is subject to such restrictions
 15 and requirements as the Commission con-
 16 siders appropriate.”.

17 **SEC. 502. DEFINITION OF DEALER.**

18 Section 3(a)(5) of the Securities Exchange Act of
 19 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

20 “(5) DEALER.—

21 “(A) IN GENERAL.—The term ‘dealer’
 22 means any person engaged in the business of
 23 buying and selling securities for such person’s
 24 own account through a broker or otherwise.

“(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term ‘dealer’ does not include a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

“(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

“(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

“(I) commercial paper, bankers acceptances, or commercial bills;

“(II) exempted securities;

“(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

1 “(IV) any standardized, credit
2 enhanced debt security issued by a
3 foreign government pursuant to the
4 March 1989 plan of then Secretary of
5 the Treasury Brady, used by such for-
6 eign government to retire outstanding
7 commercial bank loans.

8 “(ii) INVESTMENT, TRUSTEE, AND FI-
9 DUCIARY TRANSACTIONS.—The bank buys
10 or sells securities for investment
11 purposes—

12 “(I) for the bank; or

13 “(II) for accounts for which the
14 bank acts in a trustee capacity or fi-
15 duciary capacity.

16 “(iii) ASSET-BACKED TRANS-
17 ACTIONS.—The bank engages in the
18 issuance or sale to qualified investors,
19 through a grantor trust or otherwise, of se-
20 curities backed by or representing an inter-
21 est in notes, drafts, acceptances, loans,
22 leases, receivables, other obligations, or
23 pools of any such obligations predomi-
24 nantly originated by the bank, or a syn-
25 dicate of banks of which the bank is a

1 member, or an affiliate of any such bank
 2 other than a broker or dealer.

3 “(iv) BANKING PRODUCTS.—The bank
 4 buys or sells traditional banking products,
 5 as defined in section 503(a) of the Finan-
 6 cial Services Modernization Act of 1999.”.

7 **SEC. 503. DEFINITION AND TREATMENT OF BANKING PROD-**
 8 **UCTS.**

9 (a) DEFINITION OF TRADITIONAL BANKING PROD-
 10 UCT.—For purposes of this title and paragraphs (4) and
 11 (5) of section 3(a) of the Securities Exchange Act of 1934
 12 (15 U.S.C. 78c(a)(4), (5)), as amended by this title, the
 13 term “traditional banking product” means—

14 (1) a deposit account, savings account, certifi-
 15 cate of deposit, or other deposit instrument issued
 16 by a bank;

17 (2) a banker’s acceptance;

18 (3) a letter of credit issued or loan made by a
 19 bank;

20 (4) a debit account at a bank arising from a
 21 credit card or similar arrangement;

22 (5) a participation in a loan which the bank or
 23 an affiliate of the bank (other than a broker or deal-
 24 er) funds, participates in, or owns that is sold—

25 (A) to qualified investors; or

1 (B) to other persons that—

2 (i) have the opportunity to review and
 3 assess any material information, including
 4 information regarding the borrower's cred-
 5 itworthiness; and

6 (ii) based on such factors as financial
 7 sophistication, net worth, and knowledge
 8 and experience in financial matters, have
 9 the capability to evaluate the information
 10 available, as determined under generally
 11 applicable banking standards or guidelines;
 12 and

13 (6) any swap agreement (as defined in section
 14 11(e)(8)(D)(vi) of the Federal Deposit Insurance
 15 Act), including credit swaps and equity swaps, un-
 16 less the appropriate Federal banking agency deter-
 17 mines that credit swaps and equity swaps shall not
 18 be included in the definition of such term.

19 (b) TRANSACTIONS INVOLVING HYBRID PROD-
 20 UCTS.—

21 (1) COMMISSION AUTHORITY.—The Commission
 22 may, with the concurrence of the Board, determine,
 23 by regulation published in the Federal Register, that
 24 a bank that effects transactions in, or buys or sells,

1 a new product should be subject to the registration
2 requirements of this section.

3 (2) LIMITATION.—The Commission may not
4 impose the registration requirements of this section
5 on any bank that effects transactions in, or buys or
6 sells, a product under this subsection unless the
7 Commission, with the concurrence of the Board, de-
8 termines in the regulations described in paragraph
9 (1) that—

10 (A) the subject product is a new product;

11 (B) the subject product is a security; and

12 (C) imposing the registration requirements
13 of this section is necessary or appropriate in the
14 public interest and for the protection of inves-
15 tors.

16 (c) CLASSIFICATION LIMITED.—Classification of a
17 particular product or instrument as a traditional banking
18 product pursuant to this section shall not be construed
19 as finding or implying that such product or instrument
20 is or is not a security for any purpose under the securities
21 laws, or is or is not an account, agreement, contract, or
22 transaction for any purpose under the Commodity Ex-
23 change Act.

24 (d) NO LIMITATION ON OTHER AUTHORITY TO
25 CHALLENGE.—Nothing in this section shall affect the

1 right or authority of the Board, any appropriate Federal
2 banking agency, or any interested party under any other
3 provision of law to object to or seek judicial review as to
4 whether a product or instrument is or is not appropriately
5 classified as a traditional banking product under sub-
6 section (a).

7 (e) OTHER DEFINITIONS.—For purposes of this
8 section—

9 (1) the term “appropriate Federal banking
10 agency” has the same meaning as in section 3 of the
11 Federal Deposit Insurance Act;

12 (2) the term “bank” has the same meaning as
13 in section 3(a)(6) of the Securities Exchange Act of
14 1934;

15 (3) the term “Board” means the Board of Gov-
16 ernors of the Federal Reserve System;

17 (4) the term “Commission” means the Securi-
18 ties and Exchange Commission;

19 (5) the term “government securities” has the
20 same meaning as in section 3(a)(42) of the Securi-
21 ties Exchange Act of 1934, and, for purposes of this
22 subsection, commercial paper, bankers acceptances,
23 and commercial bills shall be treated in the same
24 manner as government securities;

1 (6) the term “new product” means a product or
2 instrument offered or provided by a bank that—

3 (i) was not subject to regulation by the
4 Commission as a security under the Federal se-
5 curities laws before the date of enactment of
6 this Act; and

7 (ii) is not a traditional banking product;
8 and

9 (7) the term “qualified investor” has the same
10 meaning as in section 3(a)(54) of the Securities Ex-
11 change Act of 1934, as added by this title.

12 **SEC. 504. QUALIFIED INVESTOR DEFINED.**

13 Section 3(a) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78c(a)) is amended by adding at the end the
15 following new paragraphs:

16 “(54) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—The term ‘qualified in-
18 vestor’ means—

19 “(i) any investment company reg-
20 istered with the Commission under section
21 8 of the Investment Company Act of 1940;

22 “(ii) any issuer eligible for an exclu-
23 sion from the definition of ‘investment
24 company’ pursuant to section 3(c)(7) of
25 the Investment Company Act of 1940;

1 “(iii) any bank (as defined in para-
2 graph (6)), savings association (as defined
3 in section 3(b) of the Federal Deposit In-
4 surance Act), broker, dealer, insurance
5 company (as defined in section 2(a)(13) of
6 the Securities Act of 1933), or business de-
7 velopment company (as defined in section
8 2(a)(48) of the Investment Company Act
9 of 1940);

10 “(iv) any small business investment
11 company licensed by the Small Business
12 Administration under subsection (c) or (d)
13 of section 301 of the Small Business In-
14 vestment Act of 1958;

15 “(v) any State sponsored employee
16 benefit plan, or any other employee benefit
17 plan, within the meaning of the Employee
18 Retirement Income Security Act of 1974,
19 other than an individual retirement ac-
20 count, if the investment decisions are made
21 by a plan fiduciary, as defined in section
22 3(21) of that Act, which is either a bank,
23 savings and loan association, insurance
24 company, or registered investment adviser;

1 “(vi) any trust whose purchases of se-
2 curities are directed by a person described
3 in clauses (i) through (v) of this subpara-
4 graph;

5 “(vii) any market intermediary that is
6 exempt under section 3(c)(2) of the Invest-
7 ment Company Act of 1940;

8 “(viii) any associated person of a
9 broker or dealer, other than a natural per-
10 son;

11 “(ix) any foreign bank (as defined in
12 section 1(b)(7) of the International Bank-
13 ing Act of 1978);

14 “(x) the government of any foreign
15 country;

16 “(xi) any corporation, company, or
17 partnership that owns and invests on a dis-
18 cretionary basis, not less than \$10,000,000
19 in investments;

20 “(xii) any natural person who owns
21 and invests on a discretionary basis, not
22 less than \$10,000,000 in investments;

23 “(xiii) any government or political
24 subdivision, agency, or instrumentality of a
25 government who owns and invests on a dis-

1 cretionary basis, not less than \$50,000,000
2 in investments; or

3 “(xiv) any multinational or supra-
4 national entity or any agency or instru-
5 mentality thereof.

6 “(B) ADDITIONAL AUTHORITY.—The Com-
7 mission may, by rule or order, define a ‘quali-
8 fied investor’ as any other person not described
9 in subparagraph (A), taking into consideration
10 such factors as the financial sophistication of
11 the person, net worth, and knowledge and expe-
12 rience in financial matters.”.

13 **SEC. 505. GOVERNMENT SECURITIES DEFINED.**

14 Section 3(a)(42) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78c(a)(42)) is amended—

16 (1) by striking “or” at the end of subparagraph
17 (C);

18 (2) by striking the period at the end of sub-
19 paragraph (D) and inserting “; or”; and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(E) for purposes of section 15C, as ap-
23 plied to a bank, a qualified Canadian Govern-
24 ment obligation, as defined in section 5136 of
25 the Revised Statutes of the United States.”.

1 **SEC. 506. EFFECTIVE DATE.**

2 This title shall become effective at the end of the 1-
3 year period beginning on the date of enactment of this
4 Act.

5 **SEC. 507. RULE OF CONSTRUCTION.**

6 Nothing in this title shall supersede, affect, or other-
7 wise limit the scope and applicability of the Commodity
8 Exchange Act (7 U.S.C. 1 et seq.).

9 **TITLE VI—UNITARY SAVINGS**
10 **AND LOAN HOLDING COMPA-**
11 **NIES**

12 **SEC. 601. PROHIBITION ON NEW UNITARY SAVINGS AND**
13 **LOAN HOLDING COMPANIES.**

14 (a) IN GENERAL.—Section 10(c) of the Home Own-
15 ers' Loan Act (12 U.S.C. 1467a(c)) is amended by adding
16 at the end the following new paragraph:

17 “(9) TERMINATION OF EXPANDED POWERS FOR
18 NEW UNITARY HOLDING COMPANY.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), paragraph (3) shall not apply with
21 respect to any company that becomes a savings
22 and loan holding company pursuant to an appli-
23 cation filed after February 28, 1999.

24 “(B) EXISTING UNITARY HOLDING COMPA-
25 NIES AND THE SUCCESSORS TO SUCH COMPA-
26 NIES.—Subparagraph (A) shall not apply, and

1 paragraph (3) shall continue to apply, to a com-
2 pany (or any subsidiary of such company)
3 that—

4 “(i) either—

5 “(I) acquired 1 or more savings
6 associations described in paragraph
7 (3) pursuant to applications, at least
8 1 of which was filed before March 1,
9 1999; or

10 “(II) became a savings and loan
11 holding company by acquiring owner-
12 ship or control of the company de-
13 scribed in subclause (I); and

14 “(ii) continues to control the savings
15 association (or associations) referred to in
16 clause (i)(I) or any successors thereto.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—

18 Section 10(c)(3) of the Home Owners’ Loan Act (12
19 U.S.C. 1467a(c)(3)) is amended by striking “Notwith-
20 standing” and inserting “Except as provided in paragraph
21 (9), and notwithstanding”.